

DOCUMENT RESUME

ED 191 924

UD 020 437

AUTHOR Dowling, Ann, Ed.
TITLE Twenty-Five Years Since Brown. A Commemorative Booklet.
INSTITUTION National Association for the Advancement of Colored People Legal Defense and Educational Fund, New York, N.Y.
PUB DATE [78]
NOTE 69p.: Photographs and Page 13 (table) may be marginally legible.

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS *Civil Rights; Court Litigation; Due Process; Elementary Secondary Education; *Equal Education; Higher Education; *Racial Integration; *School Desegregation
IDENTIFIERS National Association Advancement; *Supreme Court

ABSTRACT

This booklet commemorates the twenty-fifth anniversary of the Supreme Court Brown v Board of Education of Topeka decision through a series of contemporary commentaries. The historical foundations of the decision as well as advances in civil rights and school desegregation since 1954 are discussed and new priorities for the advancement of civil rights are outlined. Comments on the Brown decision and its implications as well as on the role of the NAACP Legal Defense Fund in expanding civil rights are offered by Jack Greenberg, Andrew Young, Vernon E. Jordan, Jr., Robert Coles, Bayard Rustin, Richard Kluger, Charles L. Black, Jr., A. Leon Higginbotham, Clifton R. Wharton, Jr., Roy Wilkins, Wiley A. Branton, James C. Comer, James L. Curtis, Dorothy Height, Anthony Amsterdam, William Sloane Coffin, Charles V. Hamilton, Patricia Roberts Harris, Nicholas De B. Katzenbach, James Vorenburg, Roger Wilkins, Michael I. Sovern, Vine Deloria, Jr., Margaret Fung, Theodore M. Hesburgh, Vilma Martinez, and Earl Warren. (MK)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED191924

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1953

No. 1

OLIVER BROWN, et al., Appellants,
vs.
BOARD OF EDUCATION OF TOPEKA, et al., Appellees.

No. 2

HARRY BRIGGS, JR., et al., Appellants.
vs.
R.W. ELLIOTT, et al., Appellees.

No. 4

DOROTHY E. DAVIS, et al., Appellants,
vs.
COUNTY SCHOOL BOARD OF PRINCE EDWARDS COUNTY,
Appellees.

No. 10

FRANCIS B. GEBHART, et al., Petitioners,
vs.
ETHEL LOUISE BELTON, et al., Respondents.

Appeals From the United States District Court for the District of
Kansas, the Eastern District of South Carolina and the Eastern Dis-
trict of Virginia, and on Petition for a Writ of Certiorari to the
Supreme Court of Delaware, Respectively

BRIEF FOR APPELLANTS IN NOS. 1, 2, AND 4 AND FOR RESPONDENTS IN NO.
10 ON REARGUMENT

Charles L. Black, Jr.,
Elwood H. Chisolm,
William T. Coleman, Jr.,
Charles T. Duncan,
George E.C. Hayes,
Loren Miller,
William R. Ming, Jr.,
Constance Baker Motley,
James M. Nabrit, Jr.,
David E. Pinsky,
Frank D. Reeves,
John Scott,
Jack B. Weinstein,
of Counsel.

Harold Boulware,
Robert L. Carter,
Jack Greenberg,
Oliver W. Hill,
Thurgood Marshall,
Louis L. Redding,
Spottswood W. Robinson, III,
Charles S. Scott,

Attorneys for Appellants in
Nos. 1, 2, 4 and for Respondents
in No. 10.

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRO-
DUCED EXACTLY AS RECEIVED FROM
THE PERSON OR ORGANIZATION ORIGIN-
ATING IT. POINTS OF VIEW OR OPINIONS
STATED DO NOT NECESSARILY REPRESENT
OFFICIAL NATIONAL INSTITUTE OF
EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

JACK GREENBERG

NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

UDO 20437

Table of Contents

Foreword—Jack Greenberg	2
Opening Statement—Ambassador Andrew Young	3
Priorities Now—The Needs Today	5
Commentary	
Vernon E. Jordan, Jr.	5
Robert Coles, M.D.	8
Bayard Rustin	9
Before <i>Brown</i>	11
Commentary	
Richard Kluger	15
The <i>Brown</i> Decision	17
Commentary	
Charles L. Black, Jr.	21
Judge A. Leon Higginbotham	22
Clifton R. Wharton, Jr.	22
Roy Wilkins	23
Since <i>Brown</i>	25
Commentary	
Wiley A. Branton	32
James C. Comer, M.D.	33
James L. Curtis, M.D.	34
Dorothy Height	34
Since <i>Brown</i> (continued)	35
Commentary	
Anthony Amsterdam	42
William Sloane Coffin	42
Charles V. Hamilton	43
Patricia Roberts Harris	44
Nicholas DeB. Katzenbach	44
James Vorenberg	45
Roger Wilkins	45
Legal Talent	47
Commentary	
Michael I. Sovern	47
The Legal Defense Fund as Model	53
Commentary	
Vine DeLoria, Jr.	54
Margaret Fung	54
Father Theodore M. Hesburgh, C.S.M.	55
Vilma Martinez	56
The Legal Defense Fund Today	57
Financing Legal Redress	62
Closing Statement—Excerpts from Earl Warren Address, May 15, 1970	64

The NAACP LEGAL DEFENSE & EDUCATIONAL FUND is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 20 years a separate Board, program, staff, office and budget.

Foreword

When anniversaries roll around, one tends to look in two directions—over the years passed, and ahead to the uncertain future. In these summary pages, the Legal Defense Fund and some of its good friends do both.

As I look back to 1954, I wonder what life in America would be like today if in the Supreme Court's deliberations the *Brown* decision had gone the other way.

Legal segregation would have remained institutionalized in much of the country. The courts would not have been a forum to effect transition from a segregated to a nonsegregated society. Public protests, such as that of Martin Luther King, would have met the same hostile resistance. But the courts probably would not have protected Dr. King, as they did in over forty Supreme Court cases brought by LDF. And, therefore, legal and nonviolent means would have scarcely been available to America's black citizens in their quest for equality. America very well might have come to resemble Northern Ireland or Lebanon.

Instead, by legal process and legal protest, the nation turned the corner from being two inexorably separate societies, black and white, towards becoming one nation where skin color and the heritage of slavery one day will make no difference in a person's life.

Nevertheless, a massive task remains ahead of us. School segregation lingers in the South and is widespread in the North. Employment discrimination slowly crumbles but also resists change,

so that black unemployment is double that of white, black youth unemployment four-fold. Housing segregation yields grudgingly. The criminal justice system disadvantages the poor and black. But we continue to make precedents that combat injustice, create greater equality and offer hope.

We are effective insofar as our resources permit. We are grateful for the steadfast past support of our friends, and ask you to uphold our efforts now and in the years ahead.

**Jack Greenberg, Director-Counsel
NAACP Legal Defense Fund**



THE REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS



Andrew Young, United States Ambassador to the United Nations, is the former member of the U.S. House of Representatives who worked closely with Dr. Martin Luther King, Jr. in the Southern Christian Leadership Conference.

The revolution in race relations in the United States over the last quarter century could not have been achieved without a vast and imaginative offensive through the judicial process. The Legal Defense Fund was always at the forefront of that undertaking.

My own perspective on this legal effort came from participation in the nonviolent mass movement with its multiple strategies of citizenship education and voter registration, community organizing and economic boycotts, demonstrations and negotiations, civil disobedience and jail-ins. Time and time again, the movement called upon the Legal Defense Fund for assistance, and the Fund's lawyers responded with an aggressive use of Constitutional law and a consummate skill which prevailed in a wide variety of landmark cases.

Perhaps more than any other lawsuit, *Brown v. Board of Education* laid the groundwork for a body of law which is still growing, still strengthening our democratic institutions, still affirming and protecting the whole range of human rights that are the aspiration of all people everywhere in the world.

Twenty-five years ago, few people foresaw the potential for the larger meaning of the *Brown* case—the possibility that the legal process, when properly utilized in a democratic society, could undergird a mass movement for social change and lead to epochal victories for the rights of all citizens. That is the legacy of *Brown* and the Legal Defense Fund, a legacy that inspires people the world over and energizes the global quest for human rights.

That alone is enough to enshrine the Legal Defense Fund as a bastion of the rule of law, and a beacon of freedom with justice.

Andrew Young



In commemoration of the 23rd anniversary of *Brown v. Board of Education* and to lend support to LDF's three-year 40th anniversary national campaign, President Carter met with this group at the White House on May 18, 1977. Pictured from left to right are: ViCurtis Hinton, Coordinator, LDF-Washington Committee; Julius L. Chambers, President, LDF; William T. Coleman, Jr., Chairman of the Board, LDF; John Filer, Chairman, Aetna Life and Casualty and Chairman, 40th Anniversary Campaign; President Carter; Martha Mitchell, then Special Assistant to the President for Special Projects; Jack Greenberg, Director-Counsel, LDF; Ernest G. Green, Assistant Secretary, Employment and Training, U.S. Department of Labor and one of the nine high school students who integrated Central High in Little Rock, Arkansas; Betty J. Stebman, Development Staff, LDF; E. B. Knauft, Vice

President, Corporate Social Responsibility, Aetna Life and Casualty; James Ghee, Esquire, of Farmville, Virginia; and Lucinda Todd, retired elementary school teacher, former secretary of the Topeka branch of the NAACP and a leader in initiating the *Brown* suit.

Priorities Now—The Needs Today



Vernon E. Jordan, Jr. is President of the National Urban League. He headed the staff of the United Negro College Fund and of the Voter Education Project.

Their Urgency

The Legal Defense Fund's immediate and long-term priorities were never more necessary to the well-being of our entire country than they are today. Whether we consider the problems of the economic dilemma of the United States, the physical and mental health of our people or our deteriorating cities, the legal struggle to make equal opportunity a practical reality is fundamental to the finding of solutions.

The National Urban League has applied intelligence and energy to improve the working conditions of black Americans and other disadvantaged minorities for seven decades. In the three centuries of black experience in the United States, we have achieved tangible and measurable

progress toward equal treatment only in the past thirty years. The *Brown* decision was a quantum leap. But, although the Supreme Court and the Congress wrote the principle of equality into the enforceable laws of the nation, translating those laws into reality is still painfully slow.

An intolerable level of one in four black persons ready to work but unemployed, the rising numbers of impoverished black children, the largely unredeemed promises of decent housing and delivery of quality medical care to those who need it most, a widening gap between the incomes of black and white families, and the growing indifference to the need for workable, effective measures that improve the lot of people all mock any assumptions that we share a national commitment to the enjoyment of equal rights.

Contrary to a widely held belief, benefits from general progress in recent decades have reached only a small part of the black community. True, there is a growing number of blacks in college, in management positions, and the professions. But so long as 28 percent of black families have still to climb above the poverty level, we have a very long way to go.

And not much time.

Vernon Jordan

Twenty-five years after the Supreme Court's historic *Brown* decision outlawing racially segregated public schools, what is happening to America's commitment to equal justice?

There is rising reaction against hard-won gains. Too many legislators, government officials, even some jurists, remain callous to deprivation and injustice. As one federal Judge has observed, rights of the black and poor are being measured "with a micrometer".

The Legal Defense Fund will sustain the fight. In litigation and in negotiation we continue the national struggle for equal access to employment, against capital punishment—the most racially discriminatory penalty, for further strides desegregating education, housing, for rights of the imprisoned, for equality in medical care and voting rights, and the steady growth of an experienced civil rights bar.

Employment

Notwithstanding civil rights laws passed since 1957, and key court decisions the Fund has won, minorities still have immense difficulty getting jobs and overcoming barriers to advancement. For the same or more work, too often they receive less. Since its creation in 1964, the federal Equal Employment Opportunity Commission (EEOC) has accumulated a backlog of 130,000 complaints. Some date back as long as seven years.

The EEOC has begun crash efforts to reduce this glut. Expeditors use computers. The Fund intends to make sure that, in belated haste, equal employment opportunity is not lost in an avalanche of paper.

The LDF assigns about half of its work toward the right of minority Americans to get and hold jobs on their individual merits.

As job markets tighten, court challenges become more intricate. The May 1977 Supreme Court decision in *International Brotherhood of Teamsters v. United States* denied relief on the ground that seniority systems had no **intent** to discriminate. This may lock an entire older generation of minority men and women into an inferior least-paid underclass.

Brian Weber's suit against Kaiser Aluminum and the United Steelworkers, charges reverse discrimination. *Bakke's* case similarly charged reverse discrimination in medical school admissions. Strenuous effort has fended off the "reverse discrimination backlash", but it still presents the threat of stifling affirmative action programs. One attack on voluntary affirmative action would require employers to admit earlier discrimination that invites claims for back pay.

Nearly all the hundreds of current LDF employment suits are class actions. They affect the chances of thousands of minority workers to enter the mainstream of the nation's work force and to progress on their worth. In one recent year, the Fund appeared in 23 such employment cases in the Supreme Court.

Discrimination by Government. The 1972 Equal Employment Opportunity Act aims to "eradicate entrenched discrimination in the Federal Service." Federal workers must first exhaust procedural remedies through the Civil Service Commission before recourse to court. There were long delays, elaborate rigmarole, few results. Hundreds of Justice Department lawyers stalled reform, until the LDF won a December 1975 court judgment compelling the Commission to permit class actions. With the 1978 *Barrett* case, the

Commission was ordered to resolve class complaints it had refused to recognize.

A unanimous Supreme Court ruled in *Chandler v. Roudebush*: Federal employees' job discrimination complaints are now entitled to full trials, just as workers in the private sector are. The Fund has stepped up 20 class action suits.

The discriminatory PACE (Professional and Administrative Career Examination) is now a central issue in public employment. It screens applicants for hundreds of thousands of middle level civil service positions. On the West Coast, only one per cent of black, and no Hispanic, test-takers passed PACE. LDF and others have filed a legal challenge to the continued use of PACE.

Twenty-seven active LDF cases attack job bias by states and cities. The Fund is defending the City of Detroit against two suits filed by white police officers' organizations. The survival of affirmative action policies, begun in 1974 by Mayor Coleman Young to change discriminatory police hiring and promotions, is at stake.

Capital Punishment

The Fifth Circuit Court of Appeals has rejected legal arguments against death penalty laws developed since 1976. The Supreme Court declined to review the decision in the case of John Spinkellink, a prisoner condemned to death. If not granted clemency, the state of Florida can electrocute him in 1979. That can also pave the way for the six Fifth Circuit states to proceed with execution of 363 prisoners now on death row in the six deep South states. In these six states half of the condemned prisoners are black or Hispanic.

The Fund intends to prove that the application of newly enacted capital punishment laws is arbitrary and racist.

In 1978, the Fund continued direct defense of more than 50 defendants charged with capital crimes. John Irving's case challenges Mississippi's new law: one of the factors considered in sentencing him to death was that he had once been sent home from school as discipline. Whether Texas state psychiatrists could lawfully examine

defendants before trial and then after conviction testify as to their admission in an effort to secure the death penalty is at issue in Ernest Benjamin Smith's case.

The LDF assists lawyers now defending hundreds of the nearly 500 men and three women now under death sentences in 25 states. The LDF seeks out volunteer lawyers for condemned prisoners who are without counsel. It helps with strategy, exchange of information, and briefs.

Education

In graduate professional and undergraduate college education the LDF is making sure that past progress does not succumb to new attempts that will circumvent court-ordered desegregation.

The Fund has helped the U.S. Department of Health, Education and Welfare (HEW) define clear criteria, so that the long delayed desegregation of state-wide public university and college systems will go forward. These should eliminate wasteful curricular duplication while also strengthening predominantly black colleges.

To ensure effective progress, we monitor federal enforcement and state compliance.

The LDF is also working with admissions officers of medical schools. Since 1978, some professional school affirmative action programs have regressed, probably in reaction to *Bakke*. We are showing them how, in compliance with law, they can continue to admit minorities affirmatively.

In elementary and secondary public schools we press forward to:

- maintain desegregation won earlier in the South;
- see to it that all-white "segregation academies" do not receive tax-deductibility while continuing to evade the law;
- move against segregated Northern schools;
- defend black educators from discriminatory firings and demotions;
- eliminate "tracking" and "ability group" practices designed to segregate black children;

- prevent arbitrary and illegal suspension and expulsion of black pupils;
- eliminate racially slanted teaching materials; and
- stamp out race and sex discrimination in state-supported vocational schools.

Housing and Land Use

Lacking real enforcement, the federal Fair Housing Law fails to protect families refused sale or rental of places to live solely because of race. LDF now strongly supports efforts of the U.S. Department of Housing and Urban Development (HUD) to secure legislative authority to get cease and desist power against housing discrimination.

Since late 1977, the HUD has rated the laws and complaint procedures of 24 states and the District of Columbia as "substantially equivalent" to remedies prescribed by law. Having earlier found the diligence of these states and D.C. less deserving, the Fund consults closely with the U.S. Commission on Civil Rights staff, monitoring the actual performance under such laws and helping aggrieved home-seekers.

In the absence of effective federal protection, LDF continues to bring cases that serve as class actions affecting many thousands of families. We negotiated a consent decree with one real estate company to pay damages for past discrimination and to report periodically on how its affirmative action program works. The LDF has sued five other firms and the 300-member Delaware County Board of Realtors in Pennsylvania. The Board covers 15 almost exclusively white towns and one nearly all-black area outside metropolitan Philadelphia.

LDF has sued four major Brooklyn real estate firms and the largest New Haven, Connecticut realtors for racial steering. Evidence shows they discouraged white families from buying in areas where blacks live, and steer prospective black residents away from white suburbs.

We hope to build on the victory won in the Sixth Circuit Court of Appeals in the *Harper* case (a black couple refused

a Nashville apartment); our purpose is to establish need for objective standards, so that prospective tenants will receive equal treatment.

As in the past, we will continue the efforts begun in California where LDF established a two-pronged approach to housing cases: an exceptionally large volume of cases was brought and publicized as a way to signal that vigorous enforcement against discriminators was underway; as a further deterrent, we succeeded in raising substantially the amount of damages awarded in housing discrimination cases.

HUD has said it welcomes, but has not yet adopted, LDF recommendations to stop redlining—the systematic denial of mortgage credit in predominantly black neighborhoods. We filed a friend-of-the-court brief against federal savings and loan banks' attempt to escape California's law against redlining.

Although federal District and Supreme Court decisions have frustrated minority interests in urban renewal, highway, and regional development schemes, the Fund still brings new suits. These scrutinize relocation programs, exclusionary planning, and allocation of federal money in the light of damage they inflict on black neighborhoods.

Prisoner Rights

Having established the principle that prisoners have constitutional rights—and having long served as one of the principal private resources in the U.S. engaged in comprehensive legal action to remedy local jail conditions where degradation and brutality are normal—the Fund's task now is to make certain that court-ordered changes happen.

The June 1978 Supreme Court decision in *Finney v. Hutto* followed a decade of litigation in which some years ago the entire Arkansas prison system was held unconstitutional. The 1978 decision found that indefinite solitary confinement violates the Constitution's prohibition against cruel and unusual punishment.

In 1979 we are challenging the overcrowded racist Texas prison system. We pursue further relief of caged men,

women, and children in the wake of decisions won to date in Alabama, Florida, Georgia, Illinois, Indiana, Massachusetts, New York, Ohio, Pennsylvania, Rhode Island and Tennessee, affecting state, county, and city prisons.

Medical Care

As many as 17 private nonprofit community hospitals may be spending federal Hill-Burton money to build suburban "branches", while the services they once provided to minority and poor inner city people become vestigial remnants.

Acting as counsel for Mayor Richard Hatcher of Gary, Indiana, and other black citizens the Fund sued Methodist Hospital and HEW. The hospital had moved the preponderance of its facilities 15 miles to Merrillville, where 90 percent of patients are white. The federal District Court has ordered that the tentative settlement terms LDF negotiated not yet be made public.

In 1979 the LDF will represent the city of San Antonio, Texas, and a constellation of citizen organizations. Issues similar to those in Gary head for trial. The focus is on transfer of inpatient maternity services to an inaccessible white suburb. For the first time the U.S. Department of Justice will enter such a case, contesting relocation of a runaway hospital and consequent reduced delivery of medical treatment to sick, poor and old people.

The Vote

After protracted litigation, citizen action, and national legislation, minority citizens can register and vote. In some localities reapportionment discounts the black constituency's votes despite the Constitutional requirement that each citizen's vote be given equal weight. Multi-member districts in combination with at-large elections dilute minority voting strength.

Supreme Court decisions up to now may tolerate a double standard. City residents seeking redress against overrepresented less populated rural districts can prove violation of the one-

person, one-vote principle with simple statistical evidence. The minority plaintiff must prove racial motivation to strike down discriminatory malapportionment.

The LDF has a dozen active cases in six states that seek to correct minimized minority participation in government.

Legal Training

LDF's Earl Warren Legal Training Program is providing scholarships for 190 students at more than 50 law schools in the 1979-1980 academic year. Since our legal scholarship program began, it has helped send 1,121 black lawyers through law school.

The Fund is well prepared, but needs funds to resume its Civil Rights Legal Training Institutes for practicing lawyers. These can again be an invigorating means to hone and coordinate legal actions being brought to court across the United States.



Robert Coles, M.D. is the psychiatrist who wrote "Children of Crisis." He is Professor, Psychiatry and Medical Humanities, Harvard University.

For twenty years I've been working with American children in all parts of this country, from various classes, races, backgrounds, and I believe more strongly than ever in the value, the importance of school integration.

When I worked with the black and white children of the South in the early 1960s, I saw the extremely difficult (and different, depending upon race) hurdles they had to face, in order to sit near each other in a classroom. I often wondered whether desegregation was worth the effort—all that fear and anxiety and mutual distrust and suspicion. Yet, over time those children became not only pioneers in the legal, constitutional sense, but young people with a new sensibility—able to see others, different by skin color, as classmates, and eventually, particular persons. I've tried to document that process in the various articles and books I've written, but in essence what I've kept seeing has been children becoming not only broader in their perceptions of others, but larger human beings themselves.

I don't know how better to describe what school integration means than to quote a white student in a Mississippi school in 1970: "I've known black people all my life: 'the colored', my folks would say, or something else! Now there's Louis and there's Freddie, and there's Sally and there's Mary Ann, and each is different; and I'll bet they have our names in their heads, not just a picture of a white, and another white, and another white." Is there any more that needs saying?

We seek integration so that "a more perfect union" may be accomplished, to use an old American constitutional statement. We seek, through integration, not something in the abstract, not the construction of a social or political theory, but an ongoing experience, embedded in the concreteness of everyday life, for our American children.

Robert Coles



Bayard Rustin is President of the A. Philip Randolph Institute. He took part in the first Freedom Ride in 1947 testing enforcement of the Irene Morgan case outlawing discrimination in interstate travel. Arrested in North Carolina, he served 30 days on a chain gang. He is a member of LDF's Board.

rights movement was forced to broaden its focus, and move beyond the purely legalistic aspects of racism.

Today, we once again face new and rather difficult challenges in the area of minority employment. Specifically, we must begin to deal with issues like the impact of international trade, the problems arising from labor-saving technological innovation, and the worsening unemployment situation among minority youth.

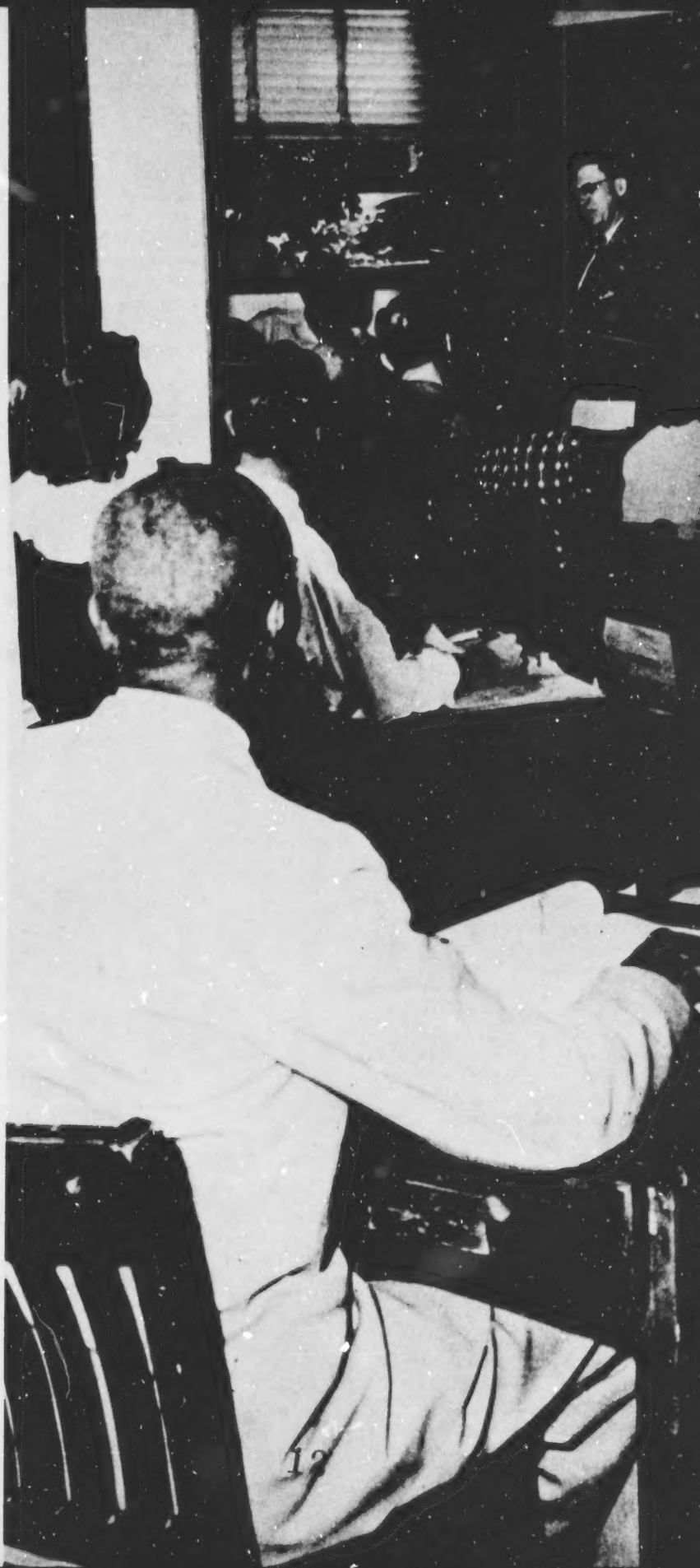
In short, our vision of minority employment problems must be all-encompassing. It must look toward long-term social and economic trends, and it must combine imagination with pragmatism.

Bayard Rustin

New Barriers To Minority Employment

Twenty-five years ago when the Supreme Court handed down its historic decision in *Brown v. Board of Education*, the barriers to minority employment and full participation in American society were shockingly clear. Throughout the South and even in many Border states, blacks and whites lived under a perverse legal system shaped by the "separate but equal" doctrine enunciated by the Supreme Court in its 1896 decision in the *Plessy v. Ferguson* case. Everywhere one went, the tangible results of the 1896 decision could be seen—signs designating separate drinking fountains and rest rooms for "coloreds" and "whites" abounded; rigidly enforced segregation existed in restaurants and public transportation; and, of course, blacks and whites had separate—and outrageously unequal—schools for their children. The legal barriers, then, were easy targets and the program of the civil rights movement was clear-cut, and highly specific.

With the proclamation of the *Brown* decision and the dramatic civil rights revolution of the 1960s, the situation changed. For the most part, the legal barriers which blocked the forward movement of black people disappeared and blatant racial segregation soon lost all social legitimacy. Consequently, the civil



G. W. McLaurin kept apart from University of Oklahoma Graduate School of Education classmates until the 1950 Supreme Court ordered relief.

Before *Brown*

The five 1954 School Desegregation cases collectively known as *Brown v. Board of Education* were the climax in a long series of tests that ate away the legal authority of enforced racial segregation in the United States. The Legal Defense Fund brief in *Brown* cited decisions from the Supreme Court in several cases in which the National Association for the Advancement of Colored People (NAACP) had taken part before the NAACP Legal Defense Fund was founded. Among these were:

Guinn v. U.S. (1915), outlawing the 1910 Oklahoma constitution's "grandfather clause" preventing Negroes from voting on the pretext that their ancestors had not voted before 1866;

Buchanan v. Warley (1917), declaring the Louisville residential zoning by race was "in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution";

The White Primary cases, declaring that blacks could not be excluded from party primaries. In *Nixon v. Herndon* (1927) Justice Oliver Wendell Holmes said, "Color cannot be made the basis of a statutory classification affecting the right set up in this case." In *Nixon v. Condon* Justice Benjamin Cardozo wrote, "The Fourteenth Amendment, adopted as it was with special solicitude for the equal protection of members of the Negro race, lays a duty upon the court to level by its judgement these barriers of color."

Volunteer attorneys argued NAACP cases. Among them were Moorfield Storey, former American Bar Association president who had been secretary to Charles Sumner, Arthur Spingarn, long NAACP president and Clarence Darrow. Starting in 1929 American Fund for Public Service grants enabled Nathan Margold, former Solicitor of the Department of the Interior, to study how legal action might reduce Negroes' legal, political, and economic disabilities.

Margold urged legal suits against segregation as a tactic to force states and boards of education "to provide 'equal if separate' accommodations in white and colored schools." The NAACP retained Charles H. Houston, then vice dean of Howard Law School, to direct a coordinated legal program; he worked part-time through June, 1935, full time until 1938, as Special Counsel to 1940, and as national legal committee chairman up to his death in 1950.

The lawyers who conducted the suits—Dr. Houston, William H. Hastie, Thurgood Marshall, and Howard Law School colleagues—did not follow Margold's idea of first attacking conditions in elementary and high schools. They chose all-white tax supported professional schools in the South. They were the only such training centers available in their states.

The Graduate School Cases began in 1935 when Thurgood Marshall persuaded the Maryland Court of Appeals to order Donald Murray

admitted to the University of Maryland Law School.

In 1938 the U.S. Supreme Court decided in *Missouri ex rel Gaines v. Canada* that the University of Missouri had to admit Lloyd Gaines to its law school. Missouri had offered to pay the difference between its tuition and the rate at an out-of-state school. Chief Justice Charles Evans Hughes dismissed the excuse that there was not enough demand to establish a law school for Negroes. He said "the State was bound to furnish... **within its borders** facilities for legal education substantially equal to those which the State there afforded for persons of the white race..."

Gaines was a breakthrough. Soon after the decision the NAACP felt there would be greatly increased demand for lawsuits. Costs would rise. It decided to establish the new NAACP Legal Defense and Educational Fund as a separate, independent organization.

The NAACP Legal Defense Fund incorporated in New York State on March 20, 1940. On its first Board of Directors were the seven incorporators: William H. Hastie; Governor Herbert H. Lehman of New York; President William Allan Neilson of Smith College; Miss Mary White Ovington, a founder of the NAACP in 1909; Judge Hubert T. Delaney; Judge Charles H. Toney; and Arthur B. Spingarn, Esq., who was elected as LDF's first President on March 27, 1940.

When the Board was expanded in 1941, it included, among others, Senator Warren Barbour of Washington; President John W. Davis of West Virginia State College (who still works with LDF 39 years later); Lewis S. Gannett of the N.Y. *Herald-Tribune*; John Hammond, the musician and businessman; and Dean Charles H. Thompson of Howard University Graduate School.

Their purposes were to provide free legal aid to Negroes suffering injustice; to seek and promote educational opportunities denied Negroes because of race; to conduct research and publish information on "educational facilities and inequalities furnished for Negroes out of public funds and on the status of the Negro in American life."

Three crucial Graduate School Cases, 1946-1950, on the Way to End Segregation

Sipuel v. University of Oklahoma was the suit Ada Lois Sipuel brought in 1946 after being refused entrance to law school. Her defeat in the trial court was sustained by the State Supreme Court in April, 1947. The trial record contained testimony supporting her case from leading law professors from Chicago, Columbia, Harvard, and Wisconsin. The LDF appealed to the U.S. Supreme Court. Its brief argued:

"From the ranks of the educated professionals come the leaders of a minority people. In the course of their daily lives they transmit their skills and knowledge to the people they serve.... The average Negro in the South looks up to the Negro professional with a respect that sometimes verges on awe. It is frequently the Negro professional who is able to articulate the hopes and aspirations of his people..."

In 1948 the Supreme Court issued its unanimous, unsigned *per curiam* decision. Oklahoma had to provide Miss Sipuel with a legal education "as soon as it does for applicants of any other group." (emphasis ours)

The LDF case of Herman M. Sweatt, a Texas mail carrier, against the University of Texas was another giant step. After

Sweatt had repeatedly applied to the University law school by registered mail, the University hurriedly assembled a "Texas Law School for Negroes" in four basement rooms. At trial in federal District Court, FUND lawyers exposed the pretense of equality under claimed "separate but equal" expedients. The segregated improvisation had nothing like the great University law school's library, Law Review, moot courts, or faculty reputation.

Significantly, Chief Justice Fred R. Vinson's 1950 decision emphasized that the absence of white law students with whom the future lawyer would practice was a serious handicap. Substantial equality, he said, could be achieved only by admission to the University of Texas Law School.

On the same day the Court decided the LDF case of G. W. McLaurin. After the University of Oklahoma Graduate School of Education admitted him, it made McLaurin sit in an anteroom adjoining the main classroom. It assigned him a desk on a stair landing in the library, and required that he eat at a table apart from fellow students. Chief Justice Vinson spoke for the unanimous Court, stating that McLaurin "must receive the same treatment at the hands of the state as students of other races."

In both *Sweatt* and *McLaurin* the Supreme Court refused to reconsider the 1896 *Plessy* formulation of "separate but equal." The unanimous Court stated that "substantial equality" was not provided when a student was kept separated from other graduate students. The decision in *McLaurin* recognized that his segregation meant discrimination. That plainly set the stage for *Brown*.

From the time the Fund had become a separate entity in 1940 Thurgood Marshall and his colleagues accelerated their work for minority rights. In education, the LDF sought and got redress for discriminatory low pay to black teachers. It acted against injustices that persisted in voting, housing, transportation and public accommodations, employment, military and criminal justice.

LDF cases resulted in a repertory of precedents that made Supreme Court avoidance of decision on the separate-

but-equal doctrine harder. A broad legal framework evolved. Well before the highest Delaware state court and the federal District court in Kansas squarely faced the segregation issue, there were landmark decisions outlawing restrictive covenants, juries that excluded blacks, and interstate Jim Crow buses.

Black Teachers' Pay

Between 1935 and mid-1938 when Thurgood Marshall succeeded Charles Houston as chief NAACP attorney in New York, Marshall won equal-pay agreements from nine of Maryland's 23 county school boards. In 1939 he brought suit on behalf of black principal Walter Mills against the Anne Arundel county board of education. U.S. District Court Judge W. Calvin Chestnut found evidence of discrimination overwhelming. None of 91 Negro teachers received as much pay as any of 243 white teachers with similar qualifications and experience.

Chestnut's judgment stated that such discrimination "violated the supreme law of the land." Anne Arundel County did not appeal. At the Governor's request the state legislature made racial pay differentials illegal across Maryland.

Alston v. School Board of City of Norfolk (Fourth Circuit Court of Appeals, June 18, 1940) was a key LDF victory. Melvin O. Alston, a high school teacher with five years' experience, was being paid \$921 per year while white male Norfolk high school teachers received \$1,200. Relief was ordered by the appellate court and the U.S. Supreme Court refused to review.

The Right to Vote

To get around the 1915 Supreme Court decision in *Guinn*, Oklahoma passed a law that anyone who had been eligible to register during a two-week period in the spring of 1916 but had failed to do so was forever ineligible to register to vote. James M. Nabrit, Jr. challenged that law in *Lane v. Wilson* which went to the Supreme Court as an NAACP case in 1939. The Supreme Court stated, in a Justice Frankfurter opinion, later quoted in numerous court decisions, that the

SEGREGATION AUTHORIZED OR REQUIRED BY STATE LAW

What Brown ended: state laws requiring and permitting segregation. SOURCE: Dr. Pauli Murray

Fifteenth Amendment forbids "sophisticated as well as simple-minded modes of discrimination." It nullified the Oklahoma law.

The Court had originally upheld the Texas white primary in *Grovey v. Townsend* in 1935. The LDF, on new grounds, challenged that practice, and in *Smith v. Allwright* the Supreme Court held that such all-white primaries violated the Fifteenth Amendment.

South Carolina attempted to evade the *Allwright* ruling with repeal of every one of 150 laws on its books governing primary elections. When Thurgood Marshall tried *Rice v. Elmore* in 1947 before the United State District Court in South Carolina, Judge J. Waties Waring forbade continued exclusion of Negroes from South Carolina primaries:

"It is time for South Carolina to rejoin the Union. It is time to fall in step with the other states and adopt the American way of conducting elections. ... Racial distinctions cannot exist in the machinery that selects the officers and lawmakers of the United States."

Housing: Restrictive Covenants Ruled Unenforceable in Court

"... it shall be a condition all the time and whether recited or referred to or not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race ..."

In at least 21 states, courts had upheld covenants that excluded Negroes, Jews, American Indians, Latin Americans, Puerto Ricans and other minorities from use of real estate. The Supreme Court repeatedly declined applications to decide on such covenants since its 1926 decision *Corrigan v. Buckley*.

During World War II over 20 suits against covenants were filed in Los Angeles and as many in Chicago. The Federal Housing Administration had drawn up a model form and kept public housing projects separate-but-equal. The 1947 report of the President's Commission on Civil Rights indicated a more

favorable climate; one of its 40 recommendations was that the Justice Department enter the legal fight against the covenants being presented by Legal Defense Fund cases from St. Louis and Detroit in *Shelley v. Kraemer*.

The LDF submitted two "Brandeis briefs" for *Shelley*.^{*} Charles H. Houston and Spottswood Robinson, III cited over 150 publications in their St. Louis case brief. Thurgood Marshall, Marian Perry and Loren Miller used data from economist Robert C. Weaver (whose book on "The Negro Ghetto" was soon to be published), public health and mental statistics for the Detroit brief.

Chief Justice Fred R. Vinson handed down the unanimous opinion of the six sitting Justices in *Shelley v. Kraemer*; restrictive covenants are unenforceable.

In *Barrows v. Jackson* (1953) the Supreme Court said that damages could not be awarded for ignoring a restrictive covenant, because that would result in their enforcement.

Interstate Travel: Buses, then Trains

In *Morgan v. Virginia* (1946) the LDF asked the Supreme Court to rule against state imposed discrimination on interstate buses. It did.

This began when a sheriff arrested Irene Morgan for refusing to go to the back of a Greyhound bus when a white passenger got on. She had boarded at Hayes store in rural Tidewater, Virginia, bound for Baltimore. In stating the Virginia travel segregation law could not apply to interstate buses, the Court said differing state laws—18 states forbade segregation, ten required it—were a burden to carriers. On a long trip, passengers could be made to change seats back and forth in a game of compulsory musical seats.

The ruling was worded for interstate buses, but soon applied to trains in a 1949 Virginia state court test and the

^{*}These amplified legal arguments with support of medical and social science knowledge, in the tradition begun by Louis D. Brandeis in his 1908 brief asking the Supreme Court to uphold a state's right to mandate a ten-hour day for women and children working in laundries.

Fourth Circuit Court of Appeals decision in 1951 that people going by train from North Carolina to Pennsylvania could not be forced to change where they sat.

Military Injustices: Courts Martial

In World War II, the Fund intervened in hundreds of cases when black service men and women were victims of gross injustice. After inept bungling by a new commanding officer resulted in long prison sentences for 68 black soldiers of the 1320th Engineer General Service Regiment; when 44 Negro Seabees, trying to protect themselves against white Marines invading their barracks with machine guns blazing were court martialed and sentenced to prison; when 50 black sailors at Port Chicago, California were convicted of mutiny for alleged refusal to load ammunition and LDF investigation found they were tried solely because they were Negroes, LDF representatives brought reversals.

In the Korean War in 1950, after the 24th Infantry Regiment recaptured Yechon in a 16-hour battle, 39 black enlisted men were convicted and sentenced for cowardice. Thurgood Marshall talked with the imprisoned men, with witnesses at their courts martial, and examined records in Korea. He found that, for the same offense, black soldiers were consistently accused of more serious charges. Trials were rushed at assembly-line speed. In one case, a black was sentenced to death; in another, 15 years to life imprisonment; fourteen received from ten to 50 years. The few whites who were sentenced received three and five years imprisonment. The LDF prevailed upon the Army to grant substantial reduction of the blacks' sentences.

All-White Juries

The Fund has defended hundreds of victims of miscarried criminal justice. When the Dallas county court convicted Henry Allen Hill of rape, LDF attorneys Leon R. Ransom and W. Robert Ming showed that Dallas jury commissioners had consistently selected only white jurors. Chief Justice Harlan F. Stone's

1942 opinion reversing Hill's conviction declared:

"Equal protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand."

In *Patton v. Mississippi* (1947) the Supreme Court struck down strategies that excluded blacks from jury service.

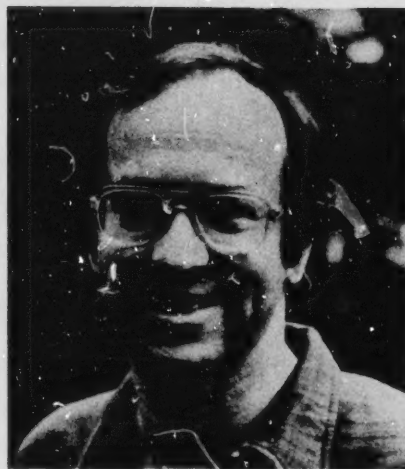
Coerced Confessions

In the same tradition are scores of cases that exposed extraction of incriminating statements under severe duress.

In *Chambers v. Florida* (1940), requiring five appeals to the Florida Supreme Court, police forced confessions from four black defendants by repeated beatings. Justice Hugo L. Black wrote:

"Due process of law ... commands that no such practice as that disclosed by this record shall send any accused to his death."

Five weeks later the Supreme Court acted in *White v. Texas* to reverse the Polk County sentence of Bob White for rape. Police had pounded out the "confession" in four nights of beatings. After the alleged victim's husband walked into the courtroom during White's third trial, and shot him, the all-white jury voted acquittal of the husband after a trial that lasted two minutes.



Richard Kluger wrote "Simple Justice." He founded Charterhouse Books, was editor-in-chief at Atheneum Publishers and executive editor of Simon & Schuster. His most recently published novel is "Star Witness."

On December 9, 1952, in the waning days of the presidency of Harry Truman, fifty-six years after "equal but separate" segregation was approved in *Plessy v. Ferguson*, ninety years after the Emancipation Proclamation, 163 years after the ratification of the Constitution, and 333 years after the first African slave was known to have been brought to the shores of the New World, the Supreme Court convened to hear arguments on whether the white people of the United States might continue to treat the black people as their subjects.

Another year and half would pass before the Justices decided *Brown v. Board of Education of Topeka*, the climax of a legal crusade more than two decades in the making. The decisive battle, won by a small company of mostly black attorneys under the flag of the NAACP Legal Defense Fund, turned May 17, 1954, into a milestone in American history. To many, in retrospect, that day marked merely the beginning of the struggle; in the midst of slowed progress today, however, it is wrong to minimize how large a triumph *Brown* was and how far the American people have come since.

Having proclaimed the equality of all men in the preamble to the Declaration of Independence, the nation's founders then elected, out of deference to the slaveholding South, to omit that definition of equalitarian democracy from the Constitution. It took a terrible civil war to correct that omission. But the Civil War

amendments, granting full-citizenship rights to the freed slaves, were soon drained of their original intention to lift the black people to meaningful membership in American society. The Court itself would do much to assist in that corrosive process, and *Plessy* was its most brutal blow. Congress was no greater help. In the grip of frankly racist Dixiecrats, it passed no civil rights laws after the Court eviscerated the one of 1875, and those that remained on the books were largely ignored by the states and unenforced by federal administrations that ranged in their attitudes from the high-tone bigotry of the Wilson regime to the largely ineffectual friendship of the Truman presidency.

The Negro, technically liberated from bondage, was thus expected to shift on his own. But he was no more welcomed in the North and the West than he was embraced in the South, which derived a perverse solace for its own troubled fortunes by continuing to bruise the bodies and souls of black folk. Denied high skills or advanced learning, they remained a superfluous and lower order of American being—excess baggage in the nation's rush to prosperity and greatness. At most, he was there to keep the American dream highly polished and fetch cool libations for its white beneficiaries. The law, as interpreted by the Supreme Court, had pronounced it permissible—indeed, it was normal and expected—to degrade black America.

It was into that moral void that the Court under Chief Justice Earl Warren stepped twenty-five years ago this day. Its opinion in *Brown*, for all its economy, represented nothing short of a reconstruction of American ideals. At a moment when the country had just begun to realize the magnitude of its world-wide ideological contest with Communist authoritarianism, the opinion of the Court said that the United States still stood for something more than material abundance; still moved to an inner spirit, however deeply it had been submerged by fear and envy and mindless hate. The Court restored to the American people a measure of the humanity that had eroded in their climb to global supremacy. The Court said, without using the words, that that ascent had been made over the backs of black America—and that when you stepped on a black man, he hurt. The time had come to stop.

But ending the torment was not enough. The nation had acquired a moral debt a dozen generations in the making. New

statutes and insistent judicial rulings were necessary—and met by resistance all along the way. Affirmative action was denounced as punitive to whites, who were reluctant to acknowledge that blacks needed, and deserved, a break if their climb to economic equality and all that flowed from it were not to consume many more generations. Some have favored benign neglect as a substitute for forthright social policy in dealing with the nation's worst continuing human dilemma.

If black hopes and white fears may have both been unreasonably high in the wake of *Brown*, both races would do well to remember that a single generation is not a long time to complete a profound social revolution. Patience, depending upon circumstances, can be both a virtue and a vice. What matters most is that the healing process, once begun, never stop until the noble destiny that animated it has been won.

Richard Kluger

School Bell



From Herblock's Here and Now (Simon & Shuster, 1955). Reprinted by permission.

The Brown Decision

On May 17, 1954 the United States made racially segregated public schools illegal. Chief Justice Earl Warren wrote the Supreme Court's unanimous decision in *Brown v. Board of Education*.

Relying on the Equal Protection Clause of the Fourteenth Amendment to the Constitution, the historic *Brown* decision stated: "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The last six words transformed America's standard of decency. Inevitably it would soon affect access to every other kind of public amenity and service.

The *Brown* decision finally overthrew the *Plessy v. Ferguson* decision of the 1896 Supreme Court. That case, seeking to uphold the right of a 'colored' passenger from Louisiana on an interstate railway train, validated "separate but equal" laws. Despite a succession of judgments that ordered relief to Negro applicants, the Supreme Court had for years avoided decision on whether the *Plessy* formula was still constitutionally valid.

Even though unanimous Supreme Court decisions in June, 1950, ordered previously segregated graduate schools at the Universities of Texas and Oklahoma to accord black students equal treatment, Chief Justice Fred M. Vinson had specifically refused to reject or affirm the separate-but-equal principle.

In his classic history of the *Brown* decision, "Simple Justice," Richard

Kluger tells how the Vinson court left segregated education below graduate professional schools still unadjudicated. And how further legal attacks directed at segregation risked permanently cementing it in thousands of schools:

"...For the first time, the Court had asserted that separate-but-equal education was not a mere slogan. The equality had to be real or the separate was constitutionally intolerable. That was what *Sweatt* had accomplished. And if separate facilities were not provided, no individual or group might suffer restrictions or harassments within the biracial school. That was what *McLaurin* did..."

"All the Justices had really done was to declare that the Court meant what it said in *Plessy* more than half a century earlier. Unless the Court could be forced now to confront the legality of segregation itself, NAACP lawyers might have to spend the next half-century arguing cases of unequal educational facilities one by one. Meanwhile, segregation would go on. If the issue were forced, though, and the Supreme Court chose not to uproot *Plessy*, the cost of defeat might be higher still. Segregation would be reinforced as the law of the land..."

Brown v. Board of Education of Topeka led the list of five school desegregation appeals the Supreme Court had scheduled for consideration in its October 1952 term.

Two of the cases, *Briggs v. Elliott* from Clarendon County, South Carolina,

and *Davis v. County School Board of Prince Edward County, Virginia*, were from the rural South. Black people there were still at the margin of existence. Black plaintiffs suffered severe reprisals after filing suits.

In Topeka, Kansas, white and black students attended school together in all classes above the sixth grade. A court order had integrated junior high schools in 1941. Oliver Brown, who headed the list of plaintiffs, was a welder working for the Santa Fe Rail Road, belonged to a union; he sued because his seven-year-old daughter Linda had to travel farther to get to her black primary school than if she had been allowed to go to either of two white elementary schools closer to their home. As a skilled craftsman he was economically secure.

In contrast, Harry Briggs, who headed the list of black plaintiffs suing Clarendon County, S.C., was fired after 14 years pumping gas at a filling station. Community pressure forced the firing of teachers, an Esso driver-salesman, two motel chambermaids, and a garage worker. A family was thrown off the farm it rented. A veteran of Iwo Jima and Okinawa could not get a tractor financed and the feed store told local black farmers they had to pay up at once. Sharecroppers were told not to bring their dead to a funeral home run by a plaintiff. The school board fired the black principal from the school where he had taught for ten years, discharged his wife, two sisters, and a niece. The church he served as pastor was stoned.



The Legal Defense Fund attorneys in the five school segregation cases, *Gebhart v. Belton*, (Delaware); *Davis v. County School Board of Prince Edward County*, (Virginia); *Briggs v. Elliott*, (South Carolina); *Bolling v. Sharpe*, (Washington); *Brown v. Board of Education*, (Kansas). From left to right—Louis L. Redding (*Gebhart*); Robert L. Carter (*Brown*); Oliver M. Hill (*Davis*); Thurgood Marshall, Director-Counsel, NAACP Legal Defense Fund; Spottswood W. Robinson, III (*Davis*); Jack Greenberg (*Gebhart*); James M. Nabrit, Jr. (*Bolling*); George E. C. Hayes (*Bolling*).

His house was burned to the ground.

Gebhardt v. Belton was an appeal by Delaware's Attorney General after the highest state court upheld complaints filed by black plaintiffs in two cases. Both had sought admission to suburban schools in the towns where the black families lived.

The Topeka and Delaware cases thrust before the Supreme Court clear findings that segregation penalized black students.

In Kansas Judge Walter A. Huxman had issued the federal District Court's unanimous opinion in July, 1962. It found physical facilities and all other measurable factors comparable in Topeka's 18 white and four black elementary schools. There was "no willful, intentional or substantial discrimination," but whether segregation itself constituted inequality was another matter:

"... If segregation within a school as in the *McLaurin* case is a denial of due process, it is difficult to see why segregation in separate schools would not result in the same denial. Or if the denial of the right to commingle with the majority group in higher institutions of learning as in the *Sweatt* case and gain the educational advantages resulting therefrom, is lack of due process, it is difficult to see why such denial would not result in the same lack of due process if practiced in the lower grades."

Attached to Huxman's opinion were nine "Findings of Fact." Finding VIII echoed the social scientists who had testified at the Topeka trial, especially the sociologist Louisz. Holt:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would

receive in a racially integrated school system."

In Delaware Chancellor Collins Seitz heard three days' testimony in the State Court of Chancery in October, 1951. One witness was Frederic Wertham, the psychiatrist who had examined eight black and five white Delaware children. Dr. Wertham reported, "Most of the children we have examined interpret segregation in one way and only one way—and that is they interpret it as punishment." He said school segregation is especially damaging because (1) it is absolutely clearcut; (2) the state does it; (3) it is discrimination of very long duration, and (4) "it is bound up with the whole educational process..."

Chancellor Seitz then saw for himself the schools for white and colored children. He found the differences overwhelming. His April, 1952, decision read:

"Defendants say that the evidence shows that the state may not be 'ready' for non-segregated education and that a social problem cannot be solved through legal force. Assuming the validity of the contention without for a minute conceding the sweeping factual assumption, nevertheless, the contention does not answer the fact that the Negro's mental health and therefore his educational opportunities are adversely affected by state-imposed segregation in education. The application of constitutional principles is often distasteful to some citizens, but that is one reason for constitutional guarantees. The principles override transitory passions"

Chancellor Seitz then placed the duty to decide on the highest Court:

"... the Supreme Court ... has said that a separate but equal test can be applied, at least below the college level. This court does not believe such an implication is justified under the evidence. Nevertheless, I do not believe a lower court can reject a principle of United States Constitutional law which has been adopted by fair implication by the highest court of the land. I believe the 'separate but equal' doctrine should be

rejected, but I also believe its rejection must come from that court."

The Legal Defense Fund was the attorney-of-record in the Kansas, South Carolina, Virginia, and Delaware cases. *Bolling v. Sharpe*, in which eleven black students sued for admission to an all-white District of Columbia junior high school, had as its counsel James M. Nabrit, Jr.—Professor of law and later president of Howard University—who was "of counsel" as co-author of the briefs in the four LDF cases and for many years has been an LDF board member.

The *Bolling* argument was different. Even though the all-white John Philip Sousa Junior High School the plaintiffs sought to enter was brand-new and beautifully equipped, and the all-black Shaw Junior High they attended had a science laboratory consisting of one Bunsen burner and a bowl of goldfish, Nabrit made no claim that Shaw was unequal to the Sousa school. He based the request for relief wholly on the fact of segregation itself.

Professor Nabrit argued that the District of Columbia government had the obligation to prove there was a reasonable basis or public purpose in racially restricting school admissions. If acts of Congress were held to compel the District to maintain separate schools, these were bills of attainder, legislative acts "which inflict punishment without a judicial trial."

He also cited Judge Henry Edgerton's 1950 U.S. Court of Appeals dissent in *Carr v. Corning*, which Charles H. Houston had argued soon before his death. Edgerton said:

"... School segregation is humiliating to Negroes. Courts have sometimes denied that segregation implies inferiority. This amounts to saying, in the face of the obvious fact of racial prejudice, that the whites who impose segregation do not consider Negroes inferior. Not only words but acts mean what they are intended and understood to mean ... Segregation of a depressed minority means that it is not thought fit to associate with others. Both whites and Negroes know that enforced racial segregation in schools exists because people who impose it

consider colored children unfit to associate with white children.

"Appellees [the D.C. school officials] say that Congress requires them to maintain segregation ... I think the question irrelevant, since legislation cannot affect appellants' constitutional rights.

"... Congress may have been right in thinking Negroes were not entitled to unsegregated schooling when the Fourteenth Amendment was adopted. But the question what schooling was good enough to meet their constitutional rights 160 or 180 years ago is different from the question what schooling meets their rights now."

James M. Nabrit, Jr. ended his oral argument before the Supreme Court with two sentences: "We submit that in this case, in the heart of the nation's capital, in the capital of democracy, there is no place for a segregated school system. The country cannot afford it, and the Constitution does not permit it, and the statutes of Congress do not authorize it."

On June 8, 1953 the Supreme Court ordered the five segregation cases to be reargued on October 12th. It asked the parties to the suits five questions. These called for evidence showing whether or not the framers and ratifiers of the Fourteenth Amendment understood that it would abolish public school segregation, or authorize future Congresses or courts to do so. If the Court were to decide against segregated public schools, what orders should it issue? It also invited the Attorney General of the U.S. to submit a new brief.

The summer of 1953 saw more intense historical research into Congressional and state legislative debates in the period soon after the Civil War than had been pursued within memory.

John W. Davis, the eminent attorney who had argued more cases before the Supreme Court than any man living or dead and was counsel for South Carolina, assigned half a dozen crack law students working as summer trainees for his Wall Street law firm of Davis, Polk & Wardwell to study the Congressional debates in the New York Public and Congressional Libraries. The leading Richmond law firm of Hunton,

Williams, Anderson, Gay & Moore, retained by Prince Edward County, studied the process whereby states had ratified the Fourteenth amendment.

The Legal Defense Fund divided research into sections on law, history, and sociology. Dr. John A. Davis, associate professor of government at City College of New York, directed non-legal studies. By the time the LDF filed its reargument brief the task force would number more than 200 scholars.*

Richard Kluger has written that more top-grade brainpower flowed into the effort early that summer "when, without being asked, William Coleman, the tough-minded black Philadelphia lawyer, phoned [Thurgood] Marshall and asked to coordinate the research in the various states—a task that in most cases had to be done in the state capital, where archives and official accounts of legislative and other governmental proceedings were generally stored.

"From his experiences as an editor of the *Harvard Law Review*, a clerk to Felix Frankfurter, and an associate at the Paul, Weiss firm in New York, Coleman had a growing network of acquaintances in the profession who shared with him a notably high-caliber intellect—young lawyers and legal scholars who had been, in effect, the law-school All Americans of their day. 'Sitting here in my office one

afternoon,' Coleman remembers, 'I figured I knew someone in each of the 37 states who could do a superior research job for us. Thurgood said fine.' Indeed, Marshall was delighted to obtain such gifted assistance from across the nation."

"Simple Justice," completed in 1975 after seven years' writing, recaptures the pace and spirit of LDF work sessions that raced against the clock. John Frank recalled, "What impressed me at the meetings in 1953 was Thurgood's good humor, and his calm, and the steadiness of his judgment."

According to Kluger, Thurgood Marshall "had another knack of incalculable value: he kept everybody feeling he or she was contributing and he reduced friction to a minimum among men who were in no way his intellectual inferiors:

"There was [Robert L.] Carter, careful and conscientious and efficient, keeping a thousand loose ends from getting knotted. There was Coleman, a superb technician, bringing his clinical intellect to bear on the language of the brief. There was Spottswood Robinson, habitually cautionary, battling fatigue and the loud, bold policy-forging of Bob Ming. Recalls one regular of the [LDF] councils: 'Ming might say, 'They got to listen to us...' and Spot would say, 'No, they don't got to listen to us...'" For all the dogmatism of his style, Ming's mind was supple and his position on the cases fluid, and Marshall knew how to get the most out of him—and when to stop taking. Others added vital ingredients. Nabrit supplied 'a kind of drive and poetry' to the sessions, remarks another insider."

Jack Greenberg, not twenty-five years old when he walked into the LDF office in 1949, brought, according to "Simple Justice," several qualities including:

"...a supple and uncluttered mind, great intellectual energy eagerly exercised and methodically disciplined, the courage to take a position on a complex legal question and the stamina to stick to it....

"And a pair of youngish Columbia professors, Jack Weinstein and Charles

*Dr. Alfred H. Kelly, professor of constitutional history at Wayne State University, Law Librarian Howard Jay Graham of the Los Angeles Bar Association, and President Horace M. Bond of Lincoln University prepared basic monographs on the adoption and ratification of the 14th amendment. Professors C. Vann Woodward of Johns Hopkins and John Hope Franklin of Howard University wrote monographs on the history of reconstruction in the South and the results of segregation. Dr. Kenneth B. Clark, associate professor of psychology at the City College of New York, headed the team that explored methods used to effect desegregation in varied situations. Others the December 15, 1953 brief credited were Professor Howard K. Beale, Dr. Charles S. Johnson, Dr. Buell Gallagher, Dr. Charles Wesley, Professor Robert K. Carr, Professor John Frank, Professor Paul Freund, Dean George M. Johnson, Professor Walter Gellhorn, Dr. Charles S. Thompson, Professor David Haber, Dr. Milton Konvitz, Professor Robert Cushman, Ulysses S. Tate, David Feller, Dr. Harvey C. Mansfield, Professor Rayford Logan, Professor Wallace Sayre, Joseph Robison, and Dr. Lillian Dabney.

L. Black, Jr., brought, besides their insights, first-rate writing skills to the home-stretch drive."

Professor Black "threw all his passionate brilliance" into the concerted effort that Fall. "Simple Justice" relates that he did not balk "at seeing his prose tinkered with or discarded. 'Everything was torn to pieces,' he recalls." But Black's gift for clear, vigorous, and moving prose was evidenced in this sort of passage that he contributed to the final brief:

"These infant appellants are asserting the most important secular claims that can be put forward by children, the claim to their full measure of the chance to learn and grow, and the inseparably connected but even more important claim to be treated as entire citizens of the society into which they have been born..."

Chief Justice Warren wrote—in the 1954 *Brown* decision—that the exhaustive study of circumstances surrounding the adoption of the Fourteenth Amendment and the Court's own investigations were at best inconclusive, because of the status of public education at that time. The movement toward free common schools supported by taxes had not yet taken hold in the South. Education of white children was largely private, that of Negroes almost nonexistent and forbidden by law in some states. Even in the North the curriculum was usually rudimentary; ungraded rural schools were common, the school year in many states but three months, and compulsory attendance virtually unknown. That there was so little in the history of the Amendment on its intended effect on public schools was not surprising.

"We cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written," Chief Justice Warren said. "We must consider public education in the light of its full development and its present place in American life throughout the Nation..."

Facing the question whether segregation of children in public schools solely on the basis of race deprives the minority children of equal educational

opportunities, Earl Warren answered, "We believe that it does."

After citing Court decisions in the *Sweatt* and *McLaurin* cases brought by the Fund that opened up graduate education, the Warren judgment quoted the Finding of Fact by the special three-judge federal court in the Kansas case. In a footnote he quoted from the similar finding from Delaware. He then cited ample support by authorities in psychological knowledge. Among the seven documenting sources mentioned were Kenneth B. Clark's summary for the Midcentury White House Conference on Children and Youth, Isidor Chein's digest of research on the effects of enforced segregation, and Gunnar Myrdal's definitive 1944 compendium on the Negro, "An American Dilemma."

Because these were class actions with wide applicability in varied local conditions, the Court called again for reargument to assist in formulating appropriate decrees.

Decades of litigation would follow. But the Supreme Court had left no doubt as to every American child's constitutional right to public education unsegregated by race. A dozen years later in his 1966 Meiklejohn Lecture at Brown University, Jack Greenberg would say that "*Brown v. Board of Education* proved to be the Declaration of Independence of its day. Together with the other school desegregation cases, it profoundly affected national thinking."



Charles L. Black, Jr. is Sterling Professor of Law at Yale University.

Did The *Brown* Case Do Any Good?

Some people seem to be saying, here and there, that the *Brown* case did no good.

Last year in Austin, Texas, my old home, I went to eat in a middle-sized cafe near the Capitol. A black family—parents and several children—came in, took a table, dealt with the children's disputes over seating, and began studying the menu. I sat quietly, with that tingling feeling in the neck, the feeling by which—I believe it is Housman who says—we recognize poetry that works. Then I went on over to the Capitol to meet Sam Hudson, the black legislator who had brought me down there to testify against the death penalty. Walking into the Capitol, I remembered that, working there as a messenger boy in 1929, I had happened to see, in a faded photograph of a Legislature of the 1870's, the face of a black man—and how the sight of that man's face, in that picture, struck me in 1929 as impossible, clear out of the order of nature.

There existed in the South, before the *Brown* case, a well-masoned wall, obviously built for the ages, scribbled over with obscene insult to millions of blacks, and shutting millions of whites away from the well of humankindness. That Southern system no longer exists *in specie*; big pieces lie about, ugly and inconvenient, but the system as a system, is gone. Southern segregation was not the only thing destroyed; the cardinal tenet of Sumnerian sociology, the tenet underlying that most sociological of opinions, *Plessy v. Ferguson*

—“law-ways cannot change folk-ways” — has been stunned into a silence rather resembling death.

I wish the people who bad-mouth the *Brown* case would give me an example of what they would call a successful case. Since nobody seems to be coming forward with this, I have to trust my own recollection and reading; the *Brown* case did more good than any other judicial decision ever uttered, anywhere.

Charles Black



Judge A. Leon Higginbotham is Judge of the United States Court of Appeals for the Third Circuit. He is author of "In the Matter of Color: Race & the American Legal Process, the Colonial Period."

Almost 100 years ago, Frederick Douglass pinpointed the critical question to this nation on the issue of race and the American legal process. He asked:

"[can] American justice, American liberty, American civilization, American law, and American Christianity... be made to include and protect alike and forever all American citizens in the rights which have been guaranteed to them by the organic and fundamental law of the land."

On May 17, 1954, the Supreme Court answered Frederick Douglass and gave vitality to the 13th, 14th and 15th amendments.

Since then, the *Brown* case has been the base for nearly every legal precedent advancing racial human rights. While *Brown* and its progeny have swept away countless obstacles in the path of racial justice, we must be ever mindful of the fact that the corridors of history are still lined with significant injustices. During the next 25 years, our citizens, our courts and our legislature will by their daily deeds answer Frederick Douglass' inquiry. Complete racial justice is not a certainty, but we have the obligation to try to make certain that these constitutional mandates will "include and protect alike and forever all American citizens."

Leon Higginbotham



Clifton R. Wharton, Jr. is Chancellor of the State University of New York.

The Struggle for Equal Access to Education

Today, black Americans have a greater opportunity than ever before to take advantage of education—thanks in part to *Brown v. Board of Education*.

The rewards of education are both tangible and more than tangible. In the years since that historic Supreme Court decision was handed down, economic gains for blacks have been consistently greatest among those with the highest levels of education. Even more important than the immediate financial rewards, however, have been the larger efforts of young black minds—not just what they have done for themselves, but what they have done for their brothers, sisters, and the next generations.

Developing what I call *black intellectual power* has been the key to understanding, dealing with, and succeeding in an often hostile world. It continues to be the key to erasing injustice, the key to full participation in the life of our pluralistic society and culture.

Those black intellectuals who make the greatest contribution to our cause, therefore, will be the ones who recognize the relationship between values and acts, between research and the solutions to problems, between ideas and progress. As an economist, a student of history, and an educator, I believe the pen is mightier than the sword. To wield the pen in the fight against ignorance and oppression is the essence of education—to struggle on behalf of intelligence, creativity, and human potential is the best hope of our beleaguered planet.

Clifton Wharton, Jr.



Roy Wilkins was Executive Director of the National Association for the Advancement of Colored People.

Civil Rights Since Brown

The Supreme Court decision in *Brown* struck down segregation in public schools. When the nine Justices declared that separate is *not* equal, it was inevitable that the legal rights of every American for access to all kinds of public accommodations had to follow.

The *Brown* decision was a cleansing act. It spelled out in plain language at long last—85 years after the Fourteenth Amendment—that no state can deny to any of its citizens the equal protection of the laws.

Black citizens lived with humiliation every day of their lives. American practices were rife with insult. More cruel even than the lynchings, beatings, penury, and abuse were the daily customs branding us inferior, customs imbedded in hundreds of laws, enforced with all the majesty and might of government.

Pervasive and profuse, these laws and ordinances reached into every phase of life, into every public place from railway and bus depots, trains and street cars, to cafeterias, hotels, theatres, libraries, stores, and rest rooms. Jim Crow was endemic. Since the undoing of Reconstruction, a heritage of legislation mocked the pretense of a nation with liberty and justice for all.

In one bold, noble stroke the *Brown* decision swept away state-imposed bigotry.

On May 17, 1954 America's best self spoke out for human dignity. It straightened our backs and strengthened our courage so that its truths could be tested against mindless mobs.

The deepest and most enduring impact made by the *Brown* decision was the new hope and confidence it gave to millions of black people for the future of their children. The often repeated phrase of black parents, "a better chance than I had," became a reality. It was a new beginning in the struggle to make opportunity equal for all citizens. What the Warren Court did on May 17, 1954 was to demonstrate that our faith in free institutions was justified, that equal justice is obtainable under the law.

Roy Wilkins



A black child desegregates a New Orleans public school, 1960.

Since *Brown*

The gains and setbacks in the 25 years since *Brown* show how the Legal Defense Fund's several civil rights concerns intertwine, how results are cumulative, and that while opposition can be bitter, vicious and persistent, it does give way to legal action.

The *Brown* decision concerned public schools. Its enormous impact gave strong impetus to desegregation of beaches, parks, libraries, buses, colleges, juries, lunch counters, and hospitals. The changes *Brown* made in law reached, in time, into and across American life.

Revulsion and defiance were at first strenuous in the South. By the mid-1970s there was more measurable progress in achieving integrated southern schools than against *de facto* segregation in the North. Victories in court led to enactment of sweeping new civil rights laws that in turn had to be tested and enforced through LDF legal actions.

Federal enforcement during the Nixon-Ford period lagged. But the broad growth of public interest law that Legal Defense Fund achievements inspired is irreversible. Even as the nation and the Supreme Court changed, decisions in LDF cases opened up new vistas for the poor, women, and minorities. As difficult suits challenge mandated affirmative action programs in education and employment, the Fund marshals evidence and arguments to protect hard-won past advances.

Throughout, the Fund has brought fresh initiatives as civil rights law evolves. It has substantially expanded

the number of experienced black civil rights attorneys. With them, the LDF fights for wider application of principles won in major cases, while facing formidable new counterattacks. Together, their work has been re-educating citizens on America's unfinished civil rights business.

The Deep South Said "Never"

The 1954 *Brown* decision struck at the core of southern life and attitudes. Hundreds of white Citizens Councils waged economic reprisals against blacks who asked for desegregation. As die-hard agitation rankled, a second decision in 1955 (*Brown II*) called for school desegregation "with all deliberate speed."

Public Schools

Response to *Brown II* varied. Large school systems in Baltimore, the District of Columbia, Louisville, St. Louis, and Wilmington desegregated within a year. So did small ones in West Virginia and Missouri. Prodding from LDF suits caused some districts in Arkansas, Florida, Kentucky, North Carolina, Oklahoma, and Texas to follow.

Elsewhere the South was defiant. Encouraged by governors and the 1956 Southern Manifesto that 110 Senators and Congressmen signed, legislatures passed at least 120 new state laws trying to hold fast to desegregation.

Virginia's "Massive Resistance"

The 1956 Virginia General Assembly required the Governor to close any desegregated schools. When federal courts ordered Norfolk, Charlottesville, and Front Royal to desegregate schools in 1958, Governor Almond shut them. Nearly 13,000 children had no education for five months.

When the Fourth Circuit Court of Appeals moved Prince Edward County's scheduled compliance up to 1959 from 1965, the county closed public schools. An "academy" for white children formed. Although it was labeled private, the state made tuition grants to white parents whose children attended. Blacks had no schools until 1963, when private gifts supported a Free School Association for them.

In May 1964 the Supreme Court ordered Prince Edward County to appropriate public school funds. It told Virginia if the county did not obey, the state might have to provide funding. U.S. Solicitor General Archibald Cox termed Virginia's behavior "this experiment in ignorance." The County capitulated.

From 1956 until 1963, the state legislature tried to stop the LDF from working in Virginia. One law it passed made it a crime to advise any person that his legal rights were infringed or to refer him to an attorney or group of attorneys. The Supreme Court struck down several Virginia laws that attempted to prevent the practice of civil rights law. A state investigating committee demanded a list

of Virginia donors to the LDF, an attempt fought successfully in the state supreme court.

"Massive Resistance" cost Virginia taxpayers over \$1,000,000. Southern states spent many millions more on delays and harassment. With considerably less financial resources, LDF—then the primary organization working to enforce the *Brown* decision—won out over their expedients.

Little Rock, New Orleans, Montgomery, Birmingham, Selma, and Memphis were sites of violence that shocked the world. With the Fund's legal support, courageous black plaintiffs remained steadfast. Aided by activist workers of both races, they endured to win vindication for the generations coming after them.

The Battle of Little Rock. Little Rock, Arkansas, adopted an extremely gradual desegregation plan. Nine black pupils were to attend the 1,000-student Central High School. Governor Orval Faubus put 270 National Guardsmen outside the school to prevent their entrance. The Federal District Court enjoined the Governor from interfering and asked the United States to enter the LDF suit of *Aaron v. Cooper*. When school opened on September 23, 1957, the guardsman had gone. But a mob so terrorized police stationed outside Central High, that the black youngsters were escorted home.

President Eisenhower ordered 1,000 paratroopers to Little Rock. He placed 10,000 Arkansas National Guard members on federal service. The black students—six boys and three girls—entered Central High on September 25. The soldiers stayed there the rest of the school year.

The Little Rock school board asked the District court to hold up the integration plan for two and a half years because of "unfavorable community attitude." On June 27, 1958 this request was granted.

The U.S. Supreme Court met in special session on August 27, 1958 to hear Thurgood Marshall argue *Cooper v. Aaron*. On September 12 the Court unanimously overruled the postponement, saying:

"Law and order are not here to be preserved by depriving the Negro children of their constitutional rights."

Governor Faubus closed all Little Rock high schools to avoid what he said was, "impending violence and disorder." They stayed shut the 1958-59 school year. Federal courts declared state-passed school-closing laws unconstitutional. Little Rock reopened high schools in August, 1959. A mob reappeared, but city police maintained order.

New Orleans. *Bush v. Orleans Parish School Board* involved, in a federal judge's words, "a chronology of delay, evasion, obstruction, defiance and reprisal." In 1951 a group of black parents had asked that schools be desegregated, but held up their 1952 suit until the Supreme Court decided *Brown*.

In 1956 a District Court ordered desegregation "with all deliberate speed." The Louisiana legislature passed what the Court of Appeals later termed "a massive body of laws" to preserve segregation. In mid-1959 the District Court ordered the school board to file a plan by March 1, 1960. After the board did not comply, the court prescribed its own year-at-a-time plan starting with the first grade by September. In August the District court struck down a state court injunction against desegregation and the governor's assumption of control over city schools.

Five special state legislative sessions "addressed out of office" four of five school board members, the board's attorney and superintendent. Federal courts declared these acts unconstitutional. Out of 134 black child applicants, four six-year-old Negro girls were admitted to two "white" schools in November 1960. Daily demonstrations, picketing, stone-throwing, and rioting, with Negroes stabbed and beaten, went on for months.

In September 1961 eight black children out of 66 who applied entered former "white" schools with relatively scant disturbance. In February 1962 the LDF filed yet another suit, this time for 101 pupils, on the ground that pupil-placement procedures continued segregation for all but a few students.

After five more federal court orders, New Orleans settled down.

Widespread Intimidation to Keep Segregation

Little Rock and New Orleans are only two of many places across the South where the LDF faced obstruction, complex legal counter-actions, and often physical danger to its plaintiffs and lawyers. There were thousands of instances of physical harm and economic reprisal against black parents.

Segregationists in Arkansas, Maryland, North Carolina, Tennessee, and Texas tried to have state courts intervene. LDF brought suits in federal courts that held the state rulings ineffectual.

- 100 jeering, angry whites in 1958 set up a roadblock to prevent Theresa Gordon, eight, and her brother James, ten, from entering the Clay, Kentucky Consolidated School. State police and National Guard escorted them in.
- In 1964 white men visited parents of nine Carthage, Mississippi children who applied to "white" schools. Debora Lewis' father was fired. She was the only black child who entered, protected by a dozen police and deputy sheriffs. The Lewis family received American Friends Service Committee help. Debora stayed in school.
- 1965: The Neshoba, Mississippi family that registered nine children in a "white" school had their cabin riddled with bullets. The Holmes County widow who enrolled her three children in a newly integrated school was discharged from her job in a laundry. A mother who sent three children to the newly integrated school in Shelby County was shot and wounded in the leg. Despite eviction from their home of 14 years, Mrs. Ruby Barnes' two daughters stayed in the formerly white Rolling Forks school. Although Walter Collier, Jr. was fired from his job loading cotton, and four crosses were burned outside his door, his daughters—aged eight and six—kept attending the Anguilla Consolidated School.
- In Fall 1965 the Wetumpka, Alabama high school, newly integrated,

suspended Debra M. Bracy when she fought back after having rubber wads shot at her. Before her scheduled return after Christmas, the Bracy home was fire bombed. They saved only a mattress, a dresser, sewing machine, and a washer, but Debra and her sister went back to school.

- As late as 1970, racists overturned and destroyed a bus carrying Negro students to the desegregated Lamar, South Carolina high school.

Persecution continued. But so did desegregation. Before 1960, suits against Arlington County and Norfolk school boards resulted in the first black pupils attending hitherto all-white Virginia public schools.

Speeding Up Compliance

The 1955 *Brown II* ruling that called for "all deliberate speed" said that "once a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner." In the 1963 LDF case of *Goss v. Nashville*, Justice Clark spoke for a unanimous Supreme Court decision that a pupil transfer plan would have perpetuated segregation.

The 1964 and 1965 Civil Rights Acts spurred Fund suits that heightened Supreme Court impatience after a decade of laggard compliance. In the *Bradley*, *Gilliam*, and *Rogers* cases, the Court made faculty desegregation a necessary part of all school desegregation plans. In *Lee v. Macon County Board of Education* it ordered all Alabama school districts desegregated and held that state tuition grants to private segregated schools were unlawful.

"Freedom of Choice"

The Fifth Circuit Court of Appeals consolidated six LDF suits contesting "freedom of choice" plans. Its detailed 1966 *Jefferson* decree required integration of students, faculty, transportation, and all school-related activities. The decree enabled the LDF to re-open 175 school cases in the six Fifth Circuit states.

Because the Fourth Circuit had approved freedom-of-choice, the LDF

asked the Supreme Court to review in *Green v. School Board of New Kent County*. "Freedom of choice" put the entire burden on black children to choose white schools in the face of community pressure and even physical violence. In *Green* one school was all black. The white school at the other end of New Kent County took a token number of Negro pupils to assure continued federal funds, while 85 percent of black children attended the all-black school. In three years no white student used "freedom" to choose it.

In the unanimous 1968 Supreme Court decision Justice Brennan ordered school boards to come forward with desegregation plans "that promise realistically to work now." Freedom of Choice plans adopted by an estimated 1,300 Southern school districts—90 percent of all—"must be held unacceptable unless they change schools to a unitary system in which racial discrimination would be eliminated root and branch."

In 1968, too, Justice Black set aside a Fourth Circuit delay of desegregation in two North Carolina counties. He said the *Green* decision "requires that the desegregation of schools be carried out at the earliest possible moment."

"Deliberate speed" Ends

After the LDF appealed against HEW's request for yet more time in 33 Mississippi school districts, the Supreme Court 1969 decision in *Alexander v. Holmes County Board of Education* directed all the districts to end dual school systems at once.

Alexander in hand, the LDF challenged the dual school system in Mobile, Alabama. Here the Fifth Circuit Court of Appeals had selected, from a variety of plans submitted, an inadequate one based on the "neighborhood school." Jack Greenberg's appeal to the Supreme Court showed that 64 percent of black elementary pupils were assigned to nine schools 90 percent or more black. Chief Justice Warren E. Burger ordered a new plan "that promised realistically to work and promised realistically to work now."

Neighborhood schools perpetuating

segregation were henceforth unconstitutional.

In 1971 *Swann v. Charlotte—Mecklenburg Board of Education* required desegregation plans to be effective. Speaking for a unanimous Court, Chief Justice Burger said that such devices as pairing, satellite zoning, and buses could be needed. "Bus transportation has long been a part of our public educational systems," he wrote, "and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." *Swann* was argued by LDF's current President Julius LeVonne Chambers, and by LDF Associate Counsel James M. Nabrit, III.

In spite of President Nixon's attempt to nullify *Swann* by instructing the Justice Department to draft a constitutional amendment against busing, the South obeyed the Supreme Court. Kluger reports that by the 1972-73 school year, 46.3 percent of black children in eleven southern states attended schools where a majority of students were white. "No other section of the nation," he wrote, "had achieved anything near that degree of desegregation."

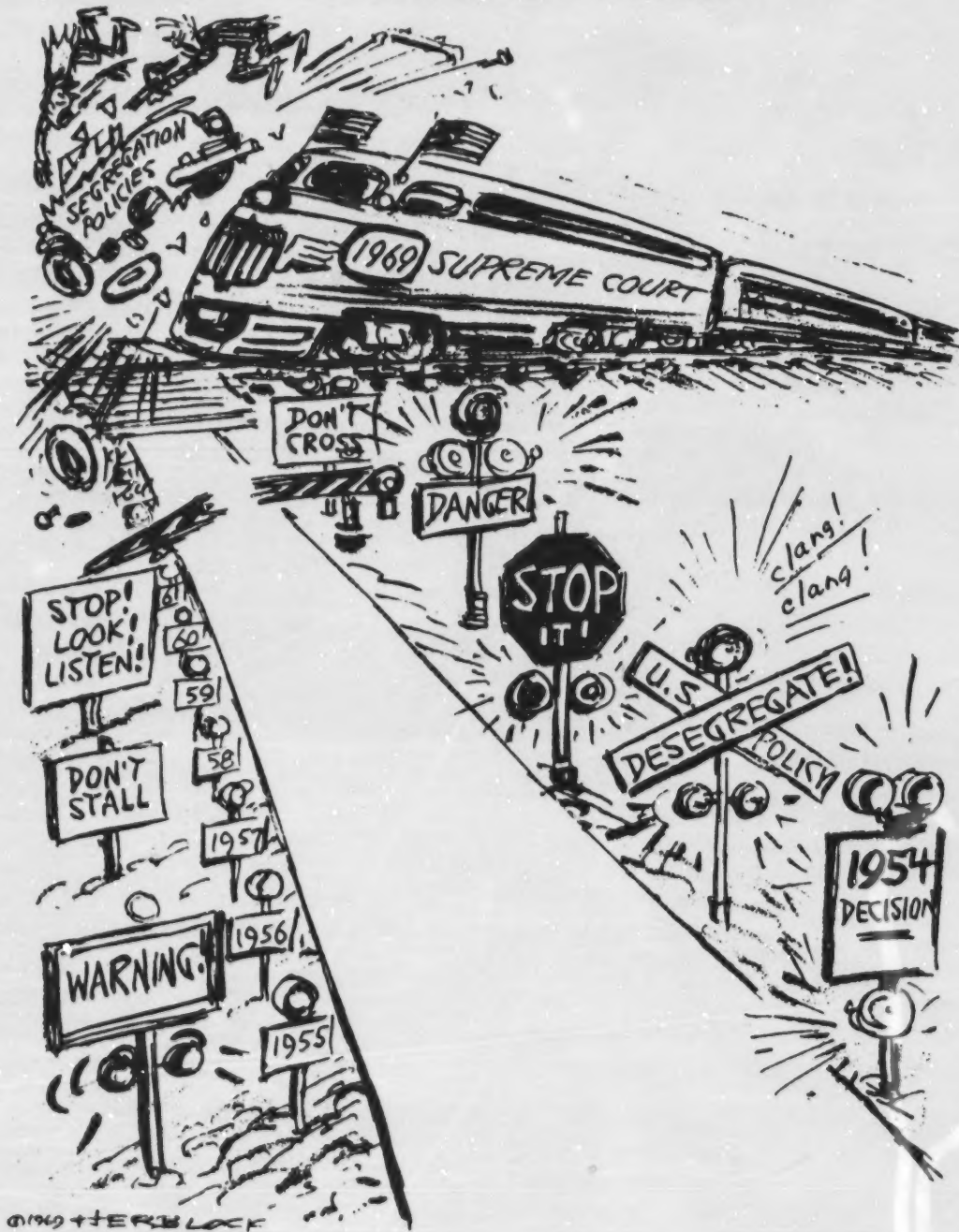
The *Swann* suit went on until July 1975, when the District Court found Charlotte-Mecklenburg in full compliance. The school system had become one of the most thoroughly integrated in the country. Based on this landmark, the LDF filed scores of suits pressing for adherence to *Swann*.

Federal Enforcement

The 1964 Civil Rights Act had directed federal agencies to cut off aid money to programs practicing race discrimination. Through 1968, 600 federal proceedings had led to observance through desegregation in all but four districts. In early 1969, however, HEW Secretary Robert H. Finch and Attorney General John Mitchell announced their new "voluntary compliance" policy. It virtually halted all fund cut-offs and enforcement against those Southern school districts still violating desegregation requirements.

HERBLOCK'S CARTOON

"It Hit Us All Of A Sudden"



In 1970 the LDF sued HEW in *Adams v. Richardson*. It charged calculated default in enforcing the law. In 1973 District Judge John H. Pratt ordered HEW to begin enforcement steps leading to fund cut-offs against school systems in 17 states unless they complied. The Circuit Court of Appeals upheld.

The Adams case has returned to court many times, renamed *Adams v. Weinberger*, *Adams v. Mathews*, and now *Adams v. Califano*. Its principal thrust is now against remiss HEW enforcement of desegregation that courts have ordered in six state university systems.

Still new, vestigial evasions in elementary and secondary schooling have had to be fought in court. In the *Wright* and *Cotton* suits the Supreme Court said that two largely white towns could not lawfully secede from predominantly black county school systems. Its 1973 *Norwood v. Harrison* decision ruled that the Mississippi practice of giving free state textbooks to segregated private academies had to stop.

School Segregation in Northern Cities

In 1973 the Supreme Court issued its first decree against a school system outside the South. Four years earlier the LDF had filed *Keyes v. School District No. 1* on behalf of eleven Denver black, Hispanic, and white parents. The Court held that when official action segregates a substantial number of schools, the entire district is presumed illegally segregated.

Keyes has had wide impact in the North. It reduced the task of furnishing proof of segregation, thus making Northern cases more manageable. The LDF suit against the Springfield, Illinois system brought a 1975 District Court order for adoption of a kindergarten to sixth grade plan devised by the Fund consultant on school integration.

1973 saw two LDF victories in *Northcross v. Board of Education*. The Sixth Circuit Court of Appeals order for an urban-suburban plan involving 13,000 students went into effect in Memphis in January. Then the Supreme Court was responsible for a giant stride forward when it upheld the right of parents in a

successful school desegregation law suit to recover the cost of attorneys' fees from the losing school board.

There were setbacks as well. The Fourth Circuit Court of Appeals reversed a District order for Richmond, Virginia urban and suburban schools to consolidate. And the 1974 Supreme Court 5-to-4 division in *Milliken v. Bradley* was a serious defeat.

Milliken held that the plan to integrate greater Detroit area city and suburban schools was unjustified. Chief Justice Burger stated that no official acts of suburban schools were responsible for Detroit's discriminatory practices, and that courts cannot reach across district boundaries to disrupt local control of schools.

Justices Brennan, Douglas, Marshall, and White dissented. Justice Marshall wrote that the decision was

"more of a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice than it is the product of neutral principles of law ... It is a course, I predict, our people will ultimately regret.

In the years since, the LDF has fought efforts to *resegregate* school systems previously integrated when new schools are built or old ones close. A 1976 court order enjoined the Galveston, Texas school board from putting new schools into use until the court approved a student-assignment plan that would achieve meaningful desegregation. As the flow of teachers' rights litigation attending school reorganizations continues to grow, cooperation with the National Education Association helps LDF to continue both financial and legal back-up of cooperating attorneys' litigation for educators.

In 1977 the District Court in Washington, D.C. made an important decision in the constellation of issues embraced by *Adams v. Califano*, first filed in 1970. It rejected HEW's petition to ignore court-ordered timetables for school desegregation. As a result, HEW's Office of Civil Rights is forced to clear its backlog of complaints, go forward with compliance reviews at all levels of public education in 17 states,

and develop a program for vocational schools.

Higher Education

Between Supreme Court decisions for *Sweatt* and *McLaurin* in 1950 and those in *Brown* in 1954 and 1955, LDF suits had won black students' admission to the University of Maryland for nursing and graduate work in sociology, and to the Universities of Virginia and North Carolina for law. Within a year after *Sweatt*, 20 private colleges in seven states and D.C. voluntarily admitted blacks.

The Universities of Alabama, Florida, Georgia, South Carolina, and Mississippi remained obdurate.

Alabama defied 1956 federal court orders. It sent Autherine Lucy home after rioters cowed the administration. Seven years later, it desegregated.

After a series of court battles, rioting delayed but did not prevent Charlayne Hunter and Hamilton Holmes from attending the University of Georgia in 1961.

The LDF had to go to court at least 30 times in 1961 and 1962 before James Meredith finally entered the University of Mississippi. Governor Ross Barnett insisted on a charade so he could be photographed blocking two of Meredith's attempts to register. A 15-hour campus riot killed a French newsman and a local juke-box repairman while white students and townspeople smashed property. Only after President Kennedy sent 5,000 Army troops and federalized state guardsmen to ensure his safety was Meredith able to attend classes.

LDF's Constance Baker Motley (now a federal judge in New York) was the lead attorney in this series of cases that integrated state universities in Georgia, Florida, Alabama, Mississippi, and South Carolina. As LDF's Associate Counsel in the early 1960s, she overcame the defenses of one segregated university after another in a stunning series of legal victories.

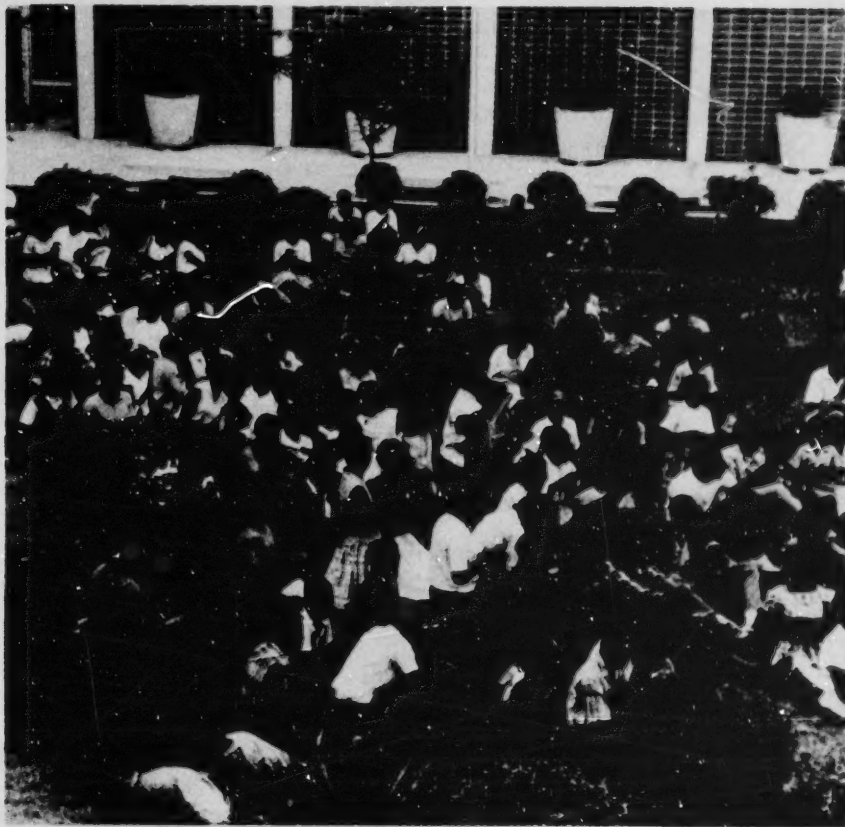
Once the color bar broke in southern colleges, some adjusted quickly. The story is told of a state legislator deciding not to cast his vote for yet one more last-ditch segregation law. He thought about

the star black halfback at his university, the big game against its traditional rival coming up, and said, "Every time I look at that young man, he gets whiter in my eyes."

There would still be protracted litigation for students exercising their rights to protest and demonstrate. Even now, we press suits to end dual state university system and to strengthen the role of traditional predominantly black institutions.



James Meredith desegregates the University of Ole Mississippi, 1962.



Lawn sit-in at Gadsden City Hall in Alabama as demonstrators protest against segregation, 1963.



Birmingham, July 1963



Mourning Reverend James Reeb, killed at Selma, 1965.



Birmingham, May 1963



Wiley A. Branton, Dean of Howard University Law School, was Director of the Voter Education Project. As a practicing lawyer in Arkansas in the 1950's, he represented the Little Rock 9 who integrated Central High School. He is Vice President of LDF.

The *Bakke* case focused public attention on civil rights to a degree unmatched for a decade. Gradual gains toward overcoming centuries of discrimination against minorities will continue to encounter counter-currents in various forms of backlash. For decades we have begun, through hard-won, step-by-step legislation and litigation, to make tangible headway in the face of massive advantages long enjoyed by majority aspirants to good jobs and professional education.

Colleges have always given preferential treatment to certain categories of applicants:—outstanding athletes, children of alumni, residents of particular geographic regions, without bringing suits from candidates who are not admitted. Historically the white applicant for a job opening was always selected, the white worker always promoted to higher job status, in preference over blacks, Hispanics, and women.

It is only when long biased practices against minorities are being revised to correct historic injustice that we hear arguments against reverse discrimination.

The Legal Defense Fund's defense of Mayor Coleman Young's affirmative action plan for the Detroit police department can influence race relations and civil peace in American cities for years to come. The LDF deserves full support for entering two cases that challenge the University of North Carolina's racially affirmative admissions policy.

Attacks on such programs may come to court, with increasing sophisticated and subtle questions. The effect of their arguments on the broad public is to distract from the enormous extent and very long duration of race discrimination and its damage to this country. The gulf separating impoverished inner city and rural America from comfortable, insulated suburbia is wide, growing, and dangerous.

Wiley Branton



James C. Comer, M.D., Associate Dean of Yale Medical School and Director of the Yale Child Study Center, is author of "Beyond Black and White."

The American Future: 25 Years After Brown v. Board of Education

A civilization can survive only when the children of each generation are prepared to live successfully in the next. Because of the complexity of this technologically-based age and rapid social change, the preparation of children for the next generation is even more important today than yesterday.

The Supreme Court decision in *Brown v. Board of Education* was a crucial step in the direction of adequate child preparation—for blacks and whites—for this and future generations. It was an effort to establish equal educational opportunities for all children. But equally important, the decision destroyed the most powerful symbol of racial inferiority and the rationale for the denial of opportunity on the basis of race. This development established the unquestioned right of blacks to living wage jobs and/or economic development opportunities.

Adequate income permits the heads of households to provide their families with food, clothing, shelter, health care and other basic human needs. Parents and others who are able to provide for themselves are able to experience a sense of adequacy, value, worth and a sense of belonging in the larger society. Such parents are better able to rear their children; enabling greater family and neighborhood vitality, strength and stability as well as optimal academic and social performance in school.

Unfortunately the nation treated school desegregation as an isolated end rather than the beginning of a continuing and comprehensive effort to prepare all children for the needs of a modern and ever changing society. Economic development and neighborhood revitalization and development in black neighborhoods did not go hand-in-hand with school desegregation. Low-income housing has all but been banned in areas with a strong economic base, closing out a disproportionate number of blacks. Health care opportunities are often fragmented and distant from the location of many blacks. As a result of all these conditions, high quality educational opportunities for blacks—in predominantly black or integrated schools—are difficult to achieve. In time, even with a genuine effort to meet affirmative action goals, the number of well-trained blacks available for professional and economic leadership positions can be diminished. This will weaken the entire black community.

It is a misperception to understand this problem as the problem of blacks. As mentioned, civilization cannot survive without the adequate preparation of children. While blacks are being most adversely affected by social policies that do not meet neighborhood, family and child development needs, all Americans are being affected. The resultant frustration, anger, disillusionment, dependency and crime—and the reaction to it—can adversely affect us all. As more and more young people are affected in each generation, our civilization can go into gradual decline and decay.

James Comer



James L. Curtis, M.D. is Assistant Dean of Cornell University Medical College.

Bakke and Health Care for Blacks

Medical practice and health care have been more tightly racially segregated than public schools in the United States, and just as *Brown* in 1954 opened up the lower grades, it is a matter of urgent need that our colleges, graduate, and professional schools be opened up equally to black Americans.

First and foremost when it comes to health, so long as the average black family has only 60 percent of the annual earnings of other families, black families can purchase fewer life necessities and will understandably be at greater risk of developing many physical and mental disorders. And yet, because of the structural inequity which is built into our racially segregated society, blacks have only one-fifth as many physicians as their population ratio would require, even if they had only average health care needs.

We must face the fact that we are far from having arrived at a color-blind way of life, as is seen from the finding that 85 percent of a black physician's patients are black, and over 90 percent of all patients seen by whites are white. It is not surprising, therefore, that for the average white Medicaid patient, \$560 per year was spent for his medical care on a national average, while the black Medicaid recipient equally entitled to complete medical care had only \$321 per year average expenditure. This comes about not only because black physicians are not available, but also because prior denial of equal postgraduate training has created

a situation where only one half as many black physicians have become specialists. And as well, there are the continuing racial barriers to access to many high-prestige hospitals and clinics, some of which still subtly exclude both black physicians and patients alike.

An important beginning just in the recent decade has been made in desegregating American medical education: three times as many blacks are entering medical school and graduating than ever before; they are now attending all the medical schools and not just Howard and Meharry; they are entering postgraduate training programs as often as their peers; and they are already making a real contribution to the health care of black people and to the health of the nation as a whole. This is why the *Bakke* case raises one of the most crucial medical and moral issues of our time. Until we are a color-blind country, we must insist on race-conscious and numerically based (goals and timetables) remedies to our racially-caused health problems. While the Court has allowed some race-consciousness in admissions programs, that decision falls short of a bold endorsement of these programs within the meaning of the Equal Protection Clause.

James Curtis



Dorothy Height is President of the National Council of Negro Women.

Seeing how much Americans can accomplish in the face of very great odds has greatly strengthened my education. I

speak as one who has known discrimination both because of race and sex. The 1954 Supreme Court decision in *Brown v. Board of Education* was a boon to the confidence of those who had to struggle against discrimination. We knew discrimination was wrong. To have our convictions vindicated by the highest court in the land gave new life to our aspirations and filled us with hope.

And I believe the greatest gains are yet to come. It required the incisive skills of LDF attorneys and scholars in a wide diversity of fields to translate legal principles into realities. Without their efforts the prospects of progress and redress for an entire generation of minority citizens and women would have been dismal indeed. But new problems emerge. Our responsibility now is to go forward to solve them and to achieve new gains.

The National Council of Negro Women has worked closely with the Fund's Division of Legal Information and Community Services. Together we did a study of the school lunch programs mandated by Congress. We found that the gulf between Congressional intent and the actual performance in the schools was enormous and exceedingly harmful to children of low-income families. There have been steady improvements since then that would scarcely have been possible, had it not been for the rigorous fact-finding and incisive reporting that the Fund provided. The LDF is a great, active national asset.

Dorothy Height

Since *Brown* continued...

Public Accommodations & Demonstrations

Brown decision wording was confined to public schools. Its ultimate effect was to outlaw all forms of state-imposed segregation. In 1955 the Supreme Court upheld the Fourth Circuit Court of Appeals ruling against Baltimore's segregated bathing beaches and other public recreation facilities, and reversed the Fifth Circuit's upholding of the Atlanta separate-but-equal golf course. It relied on *Brown* when striking down Montgomery, Alabama Jim Crow laws regarding buses in 1956.

Boydton v. Virginia, the first sit-in case, began in 1959 when a law student refused to leave the white section of the Richmond Trailways bus terminal lunchroom, and was convicted of trespass. In 1960 the Supreme Court ruled that the prohibition against racial bus segregation applied to food service on an interstate trip.

After four North Carolina Agricultural and Technical College freshmen refused to leave the Woolworth lunch counter in Greensboro several days running, other students joined them. Soon sit-ins became a national movement. The LDF represented thousands of defendants in prosecutions that posed novel property law and right-of-protest questions. Between 1961 and 1968 the Supreme Court decided more than 40 sit-in appeals. In virtually every case, the Fund won vindication for the demonstrators.

It became the legal arm of the civil rights movement. The first three sit-in victories came with the Supreme Court reversal in *Garner, Briscoe*, and *Hoston* of Louisiana convictions where trial records did not prove disturbance of the peace. In 1963 the Supreme Court decided a series of LDF sit-in appeals from Alabama, Louisiana, North and South Carolina, stating that the convictions violated the Fourteenth Amendment. Its 1964 ruling in *Bell v. Maryland* was on the ground of abatement, noting that the state had passed a law making it illegal to deny restaurant service because of race.

Two weeks later Congress passed the 1964 Civil Rights Act. The first test of

the Act's Title II came when the LDF filed *Willis v. The Pickrick Restaurant*. After a Federal Court held proprietor Lester Maddox in contempt for not serving Negro customers, and the Supreme Court refused a stay, he sold the restaurant. In the 1964 decision of *Hamm v. City of Rock Hill* the Supreme Court voided convictions of South Carolina and Arkansas sit-ins. Dissents by Justices Black, Harlan, Stewart, and White, however, showed growing reluctance to countenance nonviolent demonstrations. *Hamm* did rule, however, that sit-in demonstrators could not be prosecuted for seeking equal access to places of public accommodation, wiping out thousands of prosecutions.

The LDF served as principal counsel to Dr. Martin Luther King, Jr. from the Montgomery bus boycott through his years as head of the Southern Christian Leadership Conference up to his assassination in Memphis in 1968. LDF lawyers represented Congress of Racial Equality (CORE) Freedom Riders, Student Non-Violent Coordinating Committee (SNCC), in its work to register black voters, and the Poor People's Campaign.

Dr. King's obedience to a 1962 Federal District Court injunction postponed a scheduled march in Albany, Georgia. Although the U.S. Court of Appeals vacated it four days later, the delay bred lack of confidence in the Albany black community and SNCC workers. The city remained as segregated as ever. In Birmingham black leaders were denied a parade permit to march on Good Friday and Easter Sunday, 1963. State circuit judge William A. Jenkins issued an injunction against Wyatt T. Walker, Dr. King, Ralph Abernathy, Fred Shuttlesworth, A. D. King, and 133 other named persons to prevent the march without a permit.

They marched on Good Friday, were arrested, and jailed.

Dr. King issued "A Letter from Birmingham Jail" on April 16, 1963 in reply to eight white clergymen whose call for an end to the demonstrations had been in the press. From the 8,000 word text:

"One day the South will recognize its real heroes. They will be the James

Merediths, courageously and with a majestic sense of purpose, facing jeering and hostile mobs and the agonizing loneliness that characterizes the life of the pioneer. They will be old, oppressed, battered Negro women, symbolized in a 72-year-old woman in Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride the segregated buses, and responded to one who inquired about her tiredness with ungrammatical profundity: 'My feets is tired, but my soul is rested.' They will be young high school and college students, young ministers of the gospel and a host of the elders, courageously and nonviolently sitting in at lunch counters and willingly going to jail for conscience sake ..."

Judge Jenkins found the defendants guilty of criminal contempt. He sentenced each to a \$50 fine and five days in jail. Protests continued. After over 3,000 had been arrested the County Sheriff had to use the Birmingham football stadium to hold them.

Business and civil rights leaders, with help from Burke Marshall of the U.S. Justice Department's Civil Rights Division, made an agreement. It called for desegregating lunch counters, rest rooms, fitting rooms, and drinking fountains within 90 days; the hiring of Negroes in jobs previously denied them within 60 days; the release of jailed demonstrators, and a biracial committee to begin some communication between black and white people of the city. The LDF appealed the ministers' sentences; Chief Judge Elbert Tuttle of the Fifth Circuit Court of Appeals restrained the Birmingham Board of Education from expelling over 1,000 students who had been arrested during the demonstrations.

In August 1963 Dr. King delivered his "I Have a Dream" address in the March on Washington where more than 200,000 people showed their support for new civil rights laws. In September a bomb thrown into the Birmingham Baptist Church basement killed four little Negro girls at Sunday school. In November, President Kennedy was assassinated in Dallas. In his first address to Congress as President, Lyndon Johnson said, "No

memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long." In spite of opposition, in February the House passed a bill in some respects stronger than the Justice Department had drafted. In June the Senate invoked cloture to end a filibuster and voted a version the House accepted. On July 2 President Johnson signed the 1964 Civil Rights Act.

However, the legal battles to vindicate the methods of Dr. King and his supporters took years to resolve. In November 1965 the Alabama Court of Appeals ruled in *Shuttlesworth v. Birmingham* that the parade-permit ordinance used to try to prevent marches was unconstitutional, concurring with LDF arguments: the ordinance had given city officials unfettered discretion to regulate peaceful expression of views, and had been applied in a racially discriminatory way.

More than 27 months after receiving briefs in *Walker v. Birmingham*, the Alabama supreme court issued its December 9, 1965 opinion. It upheld contempt convictions of Dr. King and seven other ministers and quashed them for three.

The Fund's petition to the U.S. Supreme Court for review in *Walker* consisted of two parts. One described Birmingham segregation on the eve of the 1963 demonstrations, showing that the campaign to hold peaceful demonstrations was just. It told in detail the efforts to comply with the permit requirements and the arbitrary administration of the permit ordinance. The section on reasons for granting the writ stressed that *Walker* raised important questions of constitutional law under the First and Fourteenth Amendments that Alabama courts had decided wrongly.

Norman Amaker, Leroy Clark, and James M. Nabrit III of the Fund staff drafted the petition, anticipating objections of "adequate state ground" and the 1947 *Mineworkers* precedent commanding respect for court injunctions that they did not minimize. "First Amendment freedoms may be destroyed if citizens may be punished for

disobeying *ex parte* injunctions which violate the First Amendment," they wrote. "Plainly, the power to enforce unconstitutional law is the power to govern unconstitutionally." As for "adequate state ground," they asserted that applicability on a First Amendment conflict was so vital it could not turn "solely on the basis of local practice or procedure."

On October 10, 1966 the Supreme Court granted review of *Walker v. City of Birmingham*.

The LDF brief, filed in January 1967, was written primarily by Professor Anthony G. Amsterdam of Stamford Law School and Fund Associate Counsel Jim Nabrit. The Justice Department filed a friend-of-the-court brief. Written by Thurgood Marshall (then Solicitor General), Assistant Solicitor General Louis Claiborne, and Civil Rights Division Chief John Doar, it argued:

"the unconstitutionality of the underlying ordinance, the plain invalidity of the *ex parte* injunction based on the ordinance, the practical unavailability of prompt relief, and the ultimate effect of a prior restraint upon rights guaranteed by the First Amendment all should prevent applying the *Mineworkers* precedent to bar challenging the injunction's constitutionality."

The case was argued in the Supreme Court by Jack Greenberg, the LDF's Director-Counsel, in March 1967.

Justice Potter Stewart read the Supreme Court's 5-4 decision on June 12, 1967. It upheld the contempt conviction against Reverend Walker, Dr. King, and their colleagues, holding that the petitioners "could not bypass orderly judicial review of the injunction before disobeying it."

There were three biting dissents. Chief Justice Earl Warren wrote:

"I do not believe that giving this Court's seal of approval to such a gross misuse of the judicial process is likely to lead to greater respect for the law than it is likely to lead to greater protection for First Amendment freedoms."

Justice Douglas added:

"Courts as well as citizens are not free

'to ignore all the procedures of the law,' to use the Court's language. The 'constitutional freedom' of which the Court speaks can be won only if judges honor the Constitution."

Justice Brennan said that in April 1963 "Birmingham was a world symbol of implacable official hostility to gain civil rights, however peacefully sought." Had the ministers tried to get the injunction dissolved before holding their demonstrations, as the Court's majority insisted they should have done, it could have dealt a crippling blow to their chance of arousing community support for their attack on Birmingham segregation. "To preach 'respect for the judicial process' in such circumstances," Brennan continued, "is to deny the right to speak at all."

But the final chapter was to be written in 1969 when the Supreme Court ruled in *Shuttlesworth v. Birmingham* that Birmingham's parade permit law was unconstitutional. Thus after Dr. King's death the lawfulness of the 1963 Easter march was established.

Selma and the 1965 Voting Rights Act

In early 1965 Dr. King spearheaded a voter registration drive in Selma, Alabama. Before it was over, that effort involved people from all over the U.S., of all ages, from all economic levels. One woman was to be murdered. Thousands were jailed. When it was over, Congress passed the Voting Rights Act. The crusade had started earlier.

In 1963 demonstrators began to protest the fact that fewer than one out of every 100 black residents of Dallas County—where Selma is—were on the voting rolls. Hundreds were arrested and convicted. The LDF worked to appeal their convictions, and get them out of jail. Through the summer of 1964 a voter registration drive was organized, with further arrests, and LDF interventions. When Dr. King announced, at a mass meeting on January 2, 1965, plans for an all-out campaign to register blacks, LDF attorneys still were seeking Federal court dissolution of a 1964 Dallas County Court injunction forbidding civil rights activity.

Dallas County Sheriff James G. Clark and his deputies used sticks and cattle prods to brutalize demonstrators and corral black people, seeking to register into the alley of the courthouse so they would enter through the back door. In the first three months of 1965 more than 3400 people were arrested. On one February day the Sheriff and his deputies took 165 Negro youngsters on a forced march through the countryside. From three to nine LDF lawyers were in Selma and neighboring counties where scarcely any Negro voted, constantly trying to use court actions for protecting peaceful protests.

Voter registration was processed at a snail's pace. To persuade the Federal government to act, the civil rights workers set out on a march from Selma to Montgomery, the capital of Georgia. On March 7, 1965, 500 marchers half way over the bridge to the state highway were driven back by the Sheriff's deputies, lashed with bullwhips, tear gassed, and clubbed. 16 blacks were seriously injured, 40 others given hospital treatment. John Lewis of SNCC had his skull broken.

At Atlanta Dr. King said he would lead a Selma-to-Montgomery march within 48 hours. On March 9 Federal Judge Johnson, Jr. heard an LDF suit to enjoin Governor Wallace and other officials from interfering with the march; he enjoined further demonstrations until a hearing two days later. When Attorney General Nicholas Katzenbach appealed by telephone to Dr. King to hold off until after the court hearing, the latter answered, "Mr. Attorney General, you have not been a black man in America for three hundred years."

The next day Dr. King led 1,500 marchers, black and white from all over the nation, across the bridge. When they reached a police barricade Dr. King halted them, began a prayer, and called for a return to the church from which they set out.

On March 17 Judge Johnson ended five days' intense testimony—with the U.S. Justice Department joining the LDF injunction suit of *Hosea Williams et al v. Honorable George C. Wallace*—at which Jack Greenberg and a team of LDF staff and cooperating lawyers

presented plans for the peaceful five-day march. The Judge issued the order granting permission, directing the governor to give affirmative protection to the marchers. After his review of how Negro voting registration had been prevented and the police brutality against demonstrators, he stated that "in this case, the wrongs are enormous."

Sunday morning March 21st, 3,000 marchers left Selma protected by 1,800 U.S. Army military police. On March 25th some 20,000 people from all over America arrived in Montgomery and left their petition for Governor Wallace—who refused to see them—and disbanded.

The march made history. President Johnson went before a joint session of Congress to ask for new voting rights laws. Congress passed the 1965 Voting Rights Act on August 6th. It soon brought the time when black men and women were elected to public office in every state in the South.

Poverty and Consumer Law

The LDF's staff of full-time attorneys in New York rose from a dozen in 1963, when it was second only to the Department of Justice in the number of Supreme Court cases, to 25 lawyers in 1968.

Two 1967 developments helped. We established our National Office for the Rights of the Indigent with a three-year Ford Foundation grant. NORI supplied research and test-case litigation to private and legal aid society lawyers serving poor people. The Fund formed its Division of Legal Information and Community Service with Rockefeller Foundation support. Under the direction of Jean Fairfax, it set up regional offices, forming community action committees to educate minorities and poor people about rights assured by new legislation. The Division also worked to coordinate community work with the LDF legal program and to monitor government agency programs designed to help minorities and the poor.

Far-reaching changes affecting large numbers of poor people resulted.

In early 1969 the U.S. Supreme Court decided *Thorpe v. Housing Authority of*

the City of Durham (N.C.). Mrs. Joyce Thorpe received an eviction notice the day after the McDougal Terrace Tenants' Association elected her its president. Fair procedures before attempted eviction, the Court said, are mandatory—thus protecting 2,300,000 low-rent public housing tenants.

The Court declared on June 9, 1969 in *Sniadach v. Family Finance Corp.* that Wisconsin's wage garnishment law violated the Constitution, withholding wages without proving the existence of a debt. Mrs. Christine Sniadach, 23, a white Milwaukee woman, was earning \$65 a week. The finance company forced her employer to withhold half her pay, claiming that her former husband owed \$420. Laws in 17 states, permitting creditors to tie up half a person's wages before proving debt, were thus struck down affecting, according to Department of Labor estimates, at least 100,000 workers annually who were fired because of garnishments.

On March 27, 1972 NORI-LDF lawyers won an important victory with the Supreme Court decision in *Hawkins v. Town of Shaw, Mississippi*, ordering that municipal services must extend equally to black residential areas where rutted dirt roads, no drainage sewers, and sparse street lighting stood in dramatic contrast to well-paved, brightly lighted streets in white neighborhoods. The Court recognized that "the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and to public interest as the perversity of a willful scheme."

Today, the plaintiff, the black carpenter Andrew Hawkins, and his neighbors enjoy the same good streets with fire hydrants, traffic controls, water and sewer lines as do white townspeople. The principle of equal rights to municipal services has led cities as large as Knoxville and Memphis and hundreds of smaller communities to rectify longstanding disparities.

LDF-filed suits were a factor. An action on behalf of the Boxtown-Walker community brought in 1973 against the City of Memphis resulted in a mid-1976 out-of-court settlement so that black neighborhoods have regular garbage collections, a new fire station and sewer

system. The 1975 filing against the City of Ocilla, Georgia, resulted in the city getting \$159,000 in federal money to pave streets and install sewers. Recently an LDF-assisted suit for a citizens association against Fairfax County, Virginia, was settled before trial when defendants agreed to pave and approve 90 streets at a cost of more than \$1 million.

Some municipal services cases go on and on. Grievances of black residents in Mound Bayou against Bolivar County, Mississippi nearly reached settlement, but will go to court because of inferior quality of paving the country offered. The suit against Sanford, Florida begun in 1974-75 reached agreement. The city will use revenue sharing funds for equalization of street paving.

The Division of Legal Information and Community Service provided staff for the School Lunch Study by Church Women United, the National Council of Catholic and Jewish Women, and the National Branch of the Y.W.C.A. Its 1968 report, "Our Daily Bread," exposed widespread neglect of poor, malnourished children. The new law Congress passed in 1970 adopted study recommendations intended to benefit 10 million needy youngsters. The Division still monitors performance.

Its 1971 study of Title I of the Elementary and Secondary Education Act, "Is It Helping Poor Children?" documented wide misuse of federal money provided specifically for children of low-income families.

Employment

The federal Equal Employment Opportunity Commission, mandated by Title VII of the 1964 Civil Rights Act, was designed to conciliate. For years it had no power, scant staff and budget—a feeble instrument with awesome responsibilities in a realm of national life rife with injustice.

After receiving a complaint, the EEOC had two months to find facts. If it found probable cause, it attempted conciliation. When conciliation failed the injured employee had 30 days to sue. Without authority to enforce recommendations and grossly understaffed, the EEOC fell further behind increasing work loads.

In the first 18 months of EEOC, the LDF filed 1,800 employee complaints. In 1967 it had 40 Title VII cases in nine states on its docket. The EEOC submitted friend-of-the-court briefs in support of LDF suits and, in some instances, asked the Justice Department to file suits against specific discriminatory patterns or practices. Yet the U.S. Department of Justice, with sizeable staff and resources, showed no sign of keeping pace with the Legal Defense Fund in employment litigation. Some major gains:

- The first Title VII case argued in the Supreme Court was brought by LDF and concerned equal rights for women. *Phillips v. Martin Marietta Co.* (1971) made it illegal to refuse employment to a woman with pre-school age children unless the same standards applied to men in similar circumstances.
- *Griggs v. Duke Power Co.* (1971), argued by Jack Greenberg, presented the prototype of a personnel system that kept black workers in the dirtiest, least paid jobs. Chief Justice Warren E. Burger wrote the unanimous opinion. It made illegal required high school diplomas and I.Q. scores for laborers seeking promotion to coal handler. Tests for hiring and promotion had to be related to the job in question, with burden of proof on the employer. In *Griggs*, too, the Fourth Circuit Court of Appeals outlawed the system that compelled blacks seeking promotion to forfeit all seniority earned in menial jobs.
- *McDonnell-Douglas Corp. v. Green* (1973) established reasonable standards of evidence to prove racial discrimination in employment.
- In *Albermarle Paper Co. v. Moody* the Supreme Court sustained back pay awards for wages lost as a result of discrimination. It ruled that minority workers need not prove bad faith of the employer to qualify for back pay. Justice Stewart said the thrust of the Act concerns "the consequences of motivation, not simply the motivation." Employers may not use tests that screen out black applicants unless "professionally acceptable" methods show they are job-related.

- The Supreme Court decision in *Franks v. Bowman Transportation Co.* (1976) entitled workers denied jobs because of race to retroactive seniority benefits.

In lower federal courts, *Jenkins v. United Gas Corporation* won the basic right of a plaintiff to file a class action, seeking relief for himself and all employees similarly discriminated against. *Quarles v. Philip Morris, Inc.* (1968) ordered equal pay for equal work and the right to promotion with no loss of seniority. *Burrell v. Kaiser Aluminum* (1968) permitted suits when the EEOC did not investigate a complaint in reasonable time. *Clark v. American Marine Corp.* (1969) ordered job vacancies to be made known to all employees and training programs made accessible. *Lee v. Cone Mills* (1969) required that black women be hired on the same basis as white women.

Federal Employment Discrimination. In 1972 Congress added Section 717 to Title VII of the 1964 Civil Rights Act. This gave federal employees the same remedies against job discrimination that people who work for private employers have—with one gigantic hitch. The federal civil servant must first exhaust administrative remedies through the Civil Service Commission's byzantine obstacle course that has proven historically insensitive to the rights of minorities and women.

Until December 1975 the Civil Service Commission actually did not permit federal agencies to process complaints advanced by individuals on behalf of minority groups.

The first breakthrough came in *Barrett v. Civil Service Commission*. The Federal District Court in the District of Columbia ordered the Commission to allow class actions. The suit, on behalf of all blacks and women working at the NASA Space Center in Houston, charged that only 3.7 percent of employees were black, pre-employment tests lacked validity, promotions relied wholly on supervisors' hunches, merit promotion plans were a farce, job classifications segregated, and blacks were assigned to dead-end positions.

Barrett is one of three suits against NASA's race and sex discrimination. It will affect 25,000 employees in Alabama, Florida and Texas. In time there can be equal employment principles in the entire federal service.

States, Counties, Cities: *Shipp v. Tennessee Employment Service* exemplifies the Fund's strategy to initiate suits that can exert a multiplier effect. This state employment service makes 50,000 referrals a year. Two out of three clients are black. Argued before the Sixth Circuit Court of Appeals, we charged discrimination in referrals, in selecting employees, and illegally providing services to employers who discriminate on the basis of race.

We still monitor *Johnson v. City of Albany, Georgia*. The LDF sued in 1972 on behalf of 200 black workers fired after protesting unequal pay and seeking to organize a union. After four years the court decided there was substantial discrimination in every city department. A settlement was agreed to, awarding \$515,000 in back pay for 800 persons. The ruling required the setting of specific hiring and promotion goals.

At this writing 27 non-federal public employment cases are pending in a dozen states. Among them are state departments of corrections, health, and police; two county civil services, city boards of education and welfare, port authorities of New York and South Carolina; Atlanta, Cleveland, Detroit, Houston, and Louisville police departments, Houston and Milwaukee fire departments.

At last count, the LDF had recovered slightly more than \$11 million in back pay for about 2,500 employees who had suffered discrimination in employment.

Voting Rights

LDF efforts to get black access to the ballot were closely intertwined with voter registration efforts of civil rights activists across the South in the early 1960s. Its defense of 1,000 Dallas County, Alabama citizens protesting denial of voting rights in *Williams v. Wallace* was central to Martin Luther King, Jr.'s campaign in Selma. Our suit

persuaded the Federal District Court to enjoin Governor George Wallace from interfering with the march from Selma to Montgomery.

The national concern over Dallas County brutality was a central factor in obtaining passage of the 1965 Voting Rights Act by the Congress.

Overseeing the Voting Rights Act's practical enforcement has required numerous court actions. In 1966 the Fund argued *Gray v. Main* in Federal District Court when black candidates for office in Barbour, Bullock, and Macon (Alabama) counties lost to more white voters than were alive. It took federal District Court action to prevent the striking of 62 Negroes from Louisiana's LaFourche Parish list. In West Feliciana Parish we sued on behalf of a Negro whose life, and the lives of his family, were threatened if he ever again tried to register.

In 1967 an LDF suit resulted in a federal court order to Perry County, Alabama—where the number of white voters had multiplied after passage of the 1965 Voting Rights Act—to reduce its surplus.

In 1969 the Supreme Court struck down the Virginia law requiring new voters to go into the election booth with an election official, depriving them of their secret ballot. When Congress renewed the Act in 1970, it was amended to include three New York Counties because over two million blacks, Puerto Ricans and other minority citizens were faced with the same conditions as the primarily Southern states affected by the 1965 law. The LDF brought the 1972 case of *NAACP v. New York* to the Supreme Court after the federal D.C. District Court had granted New York exemption from the amended Act.

In 1975 the U.S. Supreme Court ruled in *East Carroll Parish (Louisiana) v. Marshall* that lower courts may not order the use of multi-member districts. This reaffirmed the *Chapman v. Meier* principle that one-person, one-vote is best achieved through the use of single-member districts. The Court also extended that rule in *Wallace v. House*, in which LDF action resulted in sweeping away the Ferriday, Louisiana, system.

Our suit against Shreveport, Louisiana, brought in 1976 a district court order that the city must revise the method of electing the five-member Commission Council that denied the 32 percent black population representation in local government. We negotiated the Florence, South Carolina settlement that restructured its elections to assure blacks a chance to serve as officials.

In 1977, the LDF won a voting rights case that upheld New York State redistricting that assured blacks and Puerto Ricans an effective vote.

At this writing, two LDF suits against Mobile, Alabama's at-large city elections have been argued before the Supreme Court and await decisions. In *City of Mobile v. Bolden*, challenging at-large elections of three city commission members, the District Court decision ordered its replacement with a mayor chosen at large and nine council members from single-member districts. The Fifth Circuit Court upheld this, as it did lower court findings in *Williams v. Brown* against racially discriminatory school board elections.

Administration of Justice

The chief concerns of the LDF with our system of criminal justice since the time of *Brown* have been fair treatment of accused members of minorities, capital punishment, and prison conditions. LDF won the landmark Supreme Court decision in *Fikes v. Alabama* in 1957 holding that a coerced confession used to convict a defendant is unconstitutional. *Turner v. Fouché* won the Court's definitive ruling that blacks can bring federal suits to end racial discrimination in selecting juries and the 1970 *Williams v. Illinois* rule that a poor person may not lawfully be sent to jail because of inability to pay a fine when anyone with money can pay and remain free.

In lower courts 15 LDF cases in 1967 challenged all-white juries in five Southern states. Jefferson County, Alabama, reconstituted its jury rolls as a result of *Jones v. Wilson*. Six key cases upheld rights to freedom on bail while court procedures determine the merits of cases.

Patton v. Mississippi (1974), *Sims v. Georgia* (1967), and *Alexander v. Louisiana* (1972) overturned criminal convictions by challenging discrimination in the composition of juries.

Capital Punishment

Beginning in the late 1960s anti-capital punishment lawyers, led by the Legal Defense Fund, devised and implemented a strategy designed to prevent the execution of all persons on death row and to abolish capital punishment. Earlier cases involving blacks, such as the Scottsboro cases, posed issues of right to counsel, jury discrimination and forced confessions, among others. But lurking in the background of each case was the awareness that what was at stake was not merely justice, not just the legal standards that evolve out of new situations, not simply the number of individuals affected, but the irreversible fact of death.

This strategy against the death penalty followed an earlier effort in the mid-1960s directed against racial bias in southern rape cases. To develop the claims of cruel and unusual punishment and the denial of equal protection in the application of the death penalty for rape, LDF began a search for statistics that might isolate the racial factor. Previously, the courts had been unpersuaded by the fact that, of 455 men executed since 1930 for rape, 405 (90 percent) were black. The problem was presented to Professors Anthony Amsterdam and Marvin Wolfgang who designed a study to inquire into every possible ground that a jury might consider in deciding between death and a lesser sentence. During the summer of 1965, a team of 35 law students searched the records of 2,500 cases. In the results, subjected to rigorous statistical analysis, race alone stood out as the constant factor in distinguishing cases in which the death penalty was chosen over a lesser sentence.

The results of the study were introduced by the LDF in several cases including *Maxwell v. Bishop* involving an Arkansas black sentenced to die for

rape. In 1967 the Supreme Court ordered the U.S. Court of Appeals to hear his appeal. The final chapter in this matter was written in the 1977 Supreme Court decision in LDF's case, *Coker v. Georgia*, when it declared the death penalty for rape of an adult to be in violation of the Eighth Amendment's ban on cruel and unusual punishment.

In 1968—which was to become the first year in U.S. history without an execution—the LDF convened the National Conference on Capital Punishment. Having raised the claims of racial discrimination in the application of the death penalty for rape, it was not possible to assert them on behalf of some defendants and not others: the issue might be resolved conclusively in any case. It was not possible to ignore the prejudices, other than racial, that cause a jury to impose a death sentence on any person for any crime; too often race and other prejudices interlock.

To end racism in capital punishment the effort had to become one against capital punishment as such.

The first important Supreme Court review of issues unrelated to race was in *Witherspoon v. Illinois* in 1969. It outlawed death-scrupled juries, the selection of only those jurors who approve capital punishment, denying defendants trial by a cross-section of the community. It wiped out the death sentence of as many as 100 defendants. LDF filed a friend-of-the-court brief in the case.

The Supreme Court decided LDF's case of *Furman v. Georgia* in 1972. By then LDF cases had obtained California and New Jersey state supreme court decisions eliminating death sentences in their states. The 5-4 *Furman* decision, enunciated in separate opinions by all nine justices, found that capital punishment violates the Eighth Amendment ban against cruel and unusual punishment as most state laws are arbitrarily applied. Some of the opinions reviewed the relationship between being sentenced to death and race and poverty. The decision spared the lives of approximately 630 death row prisoners nationally. There followed 35 new state laws that are still being tested in more than 100 cases in over half the 50 states.

In 1976, the Supreme Court said that executions are not inherently cruel and unusual. It sustained Florida, Georgia and Texas capital punishment laws because theoretically they give juries and judges the choice between death and life in prison after considering unique factors in each case. The Court declared Louisiana and North Carolina laws unconstitutional because they require death for particular crimes; these three decisions spared the lives of approximately 370 condemned prisoners.

In 1978, the Supreme Court declared the death penalty statute of Ohio unconstitutional in *Lockett v. Ohio*, an LDF case, thereby sparing the lives of 100 men and women on Ohio's death row. Sandra Lockett, a young black woman with no prior criminal record, had been sentenced to die for participating in a robbery in which a shopkeeper had been killed; Ms. Lockett had been outside the store in a car during the robbery, and had no involvement with the actual killing. The prosecutor had allowed the actual killer to turn state's evidence and receive a life sentence in return for his testimony against Ms. Lockett. The Ohio law was invalidated because it prevented the sentencing judge from considering any of the most significant mitigating factors in Ms. Lockett's case.

Altogether, the 1972, 1976, 1977 and 1978 decisions of the Supreme Court on the subject of capital punishment—most of them LDF cases—have spared the lives of approximately 2,000 men and women—a group that was overwhelmingly impoverished and disproportionately black.

LDF has continued its legal battle to prove that the death penalty is applied arbitrarily and discriminatorily even in the states whose statutes have been upheld by the Supreme Court. Recent statistics establish that approximately 90% of the death sentences in these states resulted from cases in which white persons were the victims. The death penalty is rarely used when blacks are the victims. Although the Supreme Court declined to hear this argument at this time when it denied review in the case of *Spinkellink v. Wainwright* on

March 26, 1979, LDF will continue to press the claim in all available forums.

Prison Reform

For well over a decade the LDF has been a leader in litigation that is bringing the rule of law to the country's prisons. It began in the late 1960s with a series of cases establishing the principle that prisoners have rights under the U.S. Constitution. Lawsuits attacked local jail conditions. Some resulted in the early precedents that established the right of pre-trial detainees to decent treatment consistent with the presumption of innocence.

LDF suits against jail conditions in Arkansas and Toledo in 1971, Dallas and Baltimore in 1972, and Boston in 1973, blazed a trail that has led to lawsuits by others which ordered the closing or renovation of such notorious big-city jails as the Tombs in New York City, Cook County Jail in Chicago, and the Hall of Justice Jail in Los Angeles.

It brought *Haines v. Kerner* up to the Supreme Court in 1972, establishing the rights of prisoners to get a hearing in federal courts on complaints they write themselves (getting such a hearing for an aged, disabled Illinois convict who attacked solitary confinement as unfair and barbaric discipline). Victory in *Preiser v. Rodriguez* in 1973 beat back prison authorities' challenge of this principle without having to waste months or years awaiting state court action on their claims. In 1974 the Supreme Court also ended California State Prison's censorship of prisoners' mail in *Procunier v. Martinez*.

Finney v. Hutto saw the Supreme Court uphold the District court ruling that Arkansas prisons shall not hold inmates in solitary confinement longer than 30 days, and declared the entire state prison system unconstitutional. In May, 1975 the LDF also obtained a federal court order in *Costello v. Wainwright* requiring the state of Florida to reduce its prison population first to "emergency" and then to "normal" capacity. In space designed to hold 7,000 inmates, the prison houses about 16,000 in tents, converted warehouses,

and cells so crowded that many must sleep on the floors.

Ever since 1973 when the LDF filed *Guthrie v. Ault* it has been at work to change Georgia State Prison conditions at Reidsville, the largest penitentiary in the state. In a facility built for 1,800 prisoners, it then held more than 3,000 and is now down to 2,150. Through mediation a court-approved agreement required the prison to desegregate dining and living conditions. After episodes of violence and killings, there was resegregation that resulted in still further violence and more murders.

Four consent decrees call for a prison law library, procedures to review use of force by staff against inmates, an end to guards carrying pick handles, the right of Black Muslims to receive literature, ministers to hold services, and eat pork-free diets.

The last consent decree calls for vocational, academic and rehabilitation programs, a library for prisoners on death row, limits to prison populations, fans installed in dormitories, continued affirmative action in hiring guards, and for additional security.

Ruiz v. Estelle, on behalf of all Texas prisoners, began seven years ago. Now on trial in the U.S. District Court at Houston, the issues are severe overcrowding; unsafe working conditions on prison farms and in factories; denial of due process in disciplinary measures and of access to courts and legal counsel; prisoners living amid brutal physical assaults from other inmates, prison guards, and inmate-guards called "building tenders," and medical treatment—even minor surgery—performed by untrained inmates. Trial began in October, 1978, and is expected to last into the Summer of 1979.

Division of Legal Information and Community Services

To multiply the benefits obtained from court decisions and to amass factual documentation for future victories require more than law suits. The LDF Division of Legal Information and Community Services, headed by Jean Fairfax, works closely with coalitions of

professional and minority community organizations.

The Division pursues non-legal remedies, monitors enforcement by federal agencies responsible for state and local compliance with legislation and court decrees, publishes research and conducts public education so that communities are informed of their rights and organize to fight for them.

The Legal Defense Fund's ability to represent large numbers of clients in class action suits is augmented by the Division's staff, working from California, Washington, D.C., New York and North Carolina. It relies on the Division to keep plaintiffs apprised of the status of prolonged litigation. An urgent priority now is compliance by six southern state public college systems with decrees in *Adams v. Califano*, originally filed in 1970, but still short of desegregation in 1979.



Anthony Amsterdam is Professor of Law at Stanford University.

The Struggle Against The Death Penalty

To get sent to prison, you have to be found guilty; to get sentenced to death, you have to be hated, feared, despised. Vengefulness dominates death cases and respects no civil rights. Race prejudice, violations of civilized procedure, and the death penalty run together.

LDF has defended death cases since the Scottsboro Boys' days. Early decisions were won because defendants' confessions were brutally extracted, or blacks were excluded from juries.

In 1965, LDF challenged the death penalty directly, arguing that it was used discriminatorily against blacks and persons convicted of crimes with white victims, and was a Cruel and Unusual Punishment. The arguments are related: death is so cruel a punishment that the public tolerates it only for an outcast few, condemned by racial and other hatreds that distort common conscience.

Major Supreme Court victories were won in 1972, 1976 and 1978, striking down forms of capital punishment as particularly arbitrary or merciless. In 1977, LDF obtained a ruling abolishing the death penalty for rape. These and other cases saved more than 2000 men and women from electrocution or gassing.

LDF has undertaken to defend all death-sentenced persons who cannot secure other counsel. It continues to develop the arguments being used to attack the death penalty in cases nationwide. A small staff is now spread perilously thin by the effort to save some 500 condemned

persons. Nevertheless, LDF has succeeded in preventing all executions except one (a suicide) since 1967.

We believe that every execution marks a death of fairness and humanity, a defeat of reason and compassion by irrationality and prejudice. We are not alone. Although opinion polls show a crime-frightened public favoring capital punishment by a 70-30 margin, the figures are exactly reversed--70 percent opposing the death penalty--in our black communities.

Anthony Amsterdam



William Sloane Coffin is Senior Minister of Riverside Church. He was Chaplain of Yale University and Williams College.

Sit-Ins and Freedom Rides

My earliest first-hand exposure to the Legal Defense Fund was in June 1961 when it represented me, other ministers and faculty people at our trial in Montgomery, Alabama, where we were charged with disobeying laws requiring segregated restaurants. Three and a half years later it was still defending us when the U.S. Supreme Court heard arguments in our case.

In April 1961, a student at Chapel Hill described to me a sit-in he had recently been part of:

"The five of us came in and sat down on what empty stools there were. Pretty soon the man behind the counter slipped

out. In the mirror I could see the crowd begin to gather on the sidewalk outside. Then the other folks on the stools began to go out whether they had finished or not, and without paying, seeing there was no one left to pay. The five of us moved together for a little warmth. Then in the mirror I was relieved to see the police. But no sooner had they appeared than they disappeared, deliberately. That was the signal. The crowd began to come in. You could just smell their anger. Some of them began to shout insults into one of my ears while from the other side a guy starts to blow cigarette smoke into my eyes. I'm gripping the counter. Then the guy with the cigarette puts it out on the back of my hand. I think I'm going to faint. Then I feel a knee in the middle of my back, then an arm around my neck. Someone is pulling my hair, hard. Pretty soon I'm on the floor, trying to stay curled up in a ball. They were really kicking us. When we were practically unconscious, the police reappeared and arrested all five of us lying on the ground for disturbing the peace. In jail they roughed us up some more, just for good measure."

A few days later in New Haven I met a close friend who had been my Divinity School classmate, John Maguire, then teaching at Wesleyan. John had followed the sit-ins even more carefully than I. He had been born and bred in Montgomery, Alabama. It angered him that, in the North, people felt segregation was a Southern problem that only Southerners could solve, while in the South, people felt that segregation was a problem only time could solve. Together we agreed that the students deserved a support they were sadly lacking, and that we might find an appropriate action to undertake together.

The opportunity for that action was waiting just around the corner. In April 1961, Martin Luther King and other civil rights leaders visited Robert Kennedy at the Justice Department. In 1941 the Supreme Court had specifically ruled that trains could not be segregated if they crossed state lines. Five years later, segregation on interstate buses was also outlawed by the Court. After 1954, the Interstate Commerce Commission had banned separate washrooms and restaurants when they served interstate travelers, a decision that had specifically been upheld by the Court. Yet despite these many clear decisions, blacks traveling on interstate buses south of the

Mason-Dixon Line were still forced to sit at the back of the bus, to eat at separate lunch counters, drink at "colored" drinking fountains, and to use only "colored" washrooms.

The civil rights leaders wanted to know why the Interstate Commerce Commission couldn't simply reaffirm the language of its charter so that desegregation in transportation could take place without all the litigation that had proved so time consuming in the educational field. Apparently Kennedy had replied that the ICC was probably the slowest moving of all regulatory agencies, and that even were he personally to appeal to its members, they undoubtedly would only initiate hearings sure to last three to four years. Understandably, the civil rights leaders were angered. So the Congress of Racial Equality decided to force the issue the following month by sending an interracial group on a bus ride through the South deliberately to test the facilities under ICC jurisdiction.

John Maguire and I organized the third Freedom Ride after Alabama Governor John Patterson had given mobs a free hand to overturn and burn the bus carrying the first riders to Aniston, then to turn on the riders with chains and clubs, rocks and fists. Our group was so small we could all fit into one car. With us were David Swift, the Lincolnesque head of Wesleyan's religion department, and Gaylord Noyce, a professor of pastoral theology at Yale, who like John was a Southern white and like David, soft-spoken. George Smith, a black third-year law student who had been with me in Guinea the summer before on a Crossroads Africa trip, was about to take final exams but said "I'll have time to study on the bus."

We flew to Atlanta where Charley Jones and Clyde Carter, two black students from Johnson Smith Seminary in North Carolina, joined forces with us. So now we were four whites and three blacks.

We took a Trailways bus to Montgomery. At the depot it looked as though the entire white population had gathered to get us. "I never believed in nonviolence more than I do now," said John. But he could smile because the crowd, armed and shouting curses, was held at bay by hundreds of Guardsmen with bayonets fixed.

Ralph Abernathy and Wyatt Walker of the Southern Christian Leadership Conference met us. Just as I got in the front seat next to Abernathy, a rock smashed the windshield. He never flinched. Surrounded by motorcycles our

two cars drove to Abernathy's house in the black district of Montgomery, passing on the way the shattered windows of the First Baptist Church which was surrounded by Guardsmen.

Fred Shuttlesworth, Wyatt Walker, and Bernard Lee escorted us to the bus depot where we would embark for Jackson, Mississippi. After buying tickets we still had a few minutes, so we all went to the lunch counter for a cup of coffee, all, that is, but Wyatt Walker who went to call his wife in Atlanta to tell her he'd be coming home that evening. Just as Ralph and I were disputing who should pay for the coffee, the heavy hand of Sheriff Mac Sam Butler descended on our shoulders. "You're under arrest for disturbing the peace," he said.

Jail was to be a new experience for all in our group, and Ralph quietly explained the procedure. After we had been booked and fingerprinted we were told that bail would be \$1,000 apiece. Each of us was allowed one telephone call. By the time I reached my wife Eva she had heard the news of our arrest over the radio. She was vastly relieved to know we were safely in jail. Also she told me that the secretary of Yale and several faculty members had insisted on raising bail. Two days later, after posting bail, we were released.

Still under heavy escort, those of us returning to Connecticut were taken to the airport, where to our surprise we found General Graham, the head of the Alabama National Guard. He was civility itself. "I do hope you gentlemen will return to the South under more favorable conditions," he said. We assured him we would, expressing the hope that such conditions would soon come about. In that Alabama airport, however, not even the most optimistic among us would have believed that 15 years hence blacks would lead the country in electing a former governor of neighboring Georgia President of the United States.

At our Montgomery trial I came to appreciate fully the competence and dedication of Legal Defense Fund lawyers, mostly young, black and white, men and women. Among them was Louis Pollak, professor of constitutional law at Yale Law School, who also argued before the Supreme Court when our case was combined with others involving sit-ins and demonstrations.

I did not then appreciate how much the LDF does with limited resources. Only after my defense against the charge of conspiring to counsel young men to refuse

being drafted for Vietnam was I given instruction. For my first trial a Boston law firm billed me \$39,000—later reduced to \$25,000. For the second, a New York firm charged \$25,000. . The sky-high fees for the best lawyers contribute in a major way to a double standard of justice. When we consider how many hundreds of cases the LDF pleads, often for plaintiffs who lack friends who can pay the tremendous costs, the LDF is a bastion of cost-effectiveness—efforts to open new gains against injustice.

William Sloane Coffin



Charles V. Hamilton is Wallace Sayre Professor of Government at Columbia University. He is a member of LDF's Board.

The Right to Vote

Over the last twenty-five years the franchise battle has developed from reasonably successful efforts to overcome racial obstacles to the right to register to vote to present efforts to guarantee the right to cast an effective vote. "Effective" refers to a vote not diluted by various administrative and legislative regulations. In a 1978 Supreme Court brief, the Legal Defense Fund argued against the at-large system for electing the Mobile, Alabama school board.

The election system in operation in Mobile utterly frustrates the purpose of the Fifteenth Amendment. In form blacks are able to mark and cast ballots, but in substance they are disenfranchised....

Despite the Voting Rights Act, and although at least one out of four Mobile voters is black, *Brown v. Board of Education* could not be implemented by resort to the ballot, but required instead resort to the federal courts.

The decades prior to the early 1960s were years of legal and political struggle to overcome grandfather clauses, white primaries, discriminatory voter registration tactics, discriminatorily administered literacy tests, and other practices aimed at depressing black voter registration. Virtually all those obstacles were defeated, with probably the most obstinate one still being economic intimidation.

But even as the registration figures have increased (for example, in Mississippi from 6.2 percent black registration in 1961 to 59.3 percent in 1971), the legal struggle continues against various efforts to minimize the effectiveness of a black electorate. Such efforts take various forms: at-large elections rather than election by districts; new, frequently restrictive, requirements for candidacy to office; changes in polling places; reapportionment and redistricting.

Section 5 of the Voting Rights Act of 1965 requires changes from conditions existing prior to November, 1964 to be approved by the U.S. Attorney General or the federal district court in Washington, D.C. In 1978, Mr. Justice Thurgood Marshall wrote: "...in determining if an enactment triggers Section 5 scrutiny, the question is not whether the provision is in fact innocuous and likely to be approved, but whether it has potential for discrimination."

Such a position recognizes that the many years of "systematic resistance to the Fifteenth Amendment" have not entirely abated.

Charles Hamilton



Patricia Roberts Harris is U.S. Secretary of Housing and Urban Development and a former member of LDF's Board.

In the 25-year span since the Supreme Court's decision in *Brown*, we have seen development of a substantial body of legislation designed to erase discrimination and assure for all Americans equal opportunity in all walks of life. But as we are painfully aware, we have a long way to go to abolish discrimination.

Today discrimination is even more prevalent, as the forms it takes have become more extensive and sophisticated in recent years. This was the conclusion reached by the nationwide survey of discrimination in housing, which measured rental and sales housing practices.

Thus, we must face the fact that ten years after Title VIII of the 1968 Civil Rights Act was signed into law, 200 years after the founding of this nation, and more than 100 years after the Emancipation Proclamation, discrimination not only persists, it is pervasive.

We have seen successive Executive Orders proclaiming equality, but we still have inequality.

Nevertheless, I am optimistic that discrimination will be conquered by the goodwill and work of the partnership of all elements of society and of government. As we continue the long pull, we must sharpen the focus and the tools we now have to end discrimination and I count the NAACP and the Legal Defense Fund as among the most important of those tools.

While housing has always been a priority for the Legal Defense Fund, it was the last Civil Rights issue to gain Congressional attention. It must now capture the most prominent concern and

commitment of all of the people—for until such time as we can assure every man, woman, and child in this country free and equal access to decent shelter in a suitable environment, not only will our work be undone, but also the other basic freedoms will be in peril.

President Carter's statement commemorating the tenth anniversary of the signing of the National Fair Housing Law last April emphasized this overriding issue. He said, "The freedoms that we believe in, enjoy, and benefit from cannot be secure unless they are shared by all Americans. As long as equal opportunity is denied to one person, the promise of equality for all will be unfulfilled."

Patricia Roberts Harris



Nicholas DeB. Katzenbach is General Counsel of International Business Machines Corporation. He was U.S. Attorney General and Under Secretary of State. He is a member of LDF's Board.

It was hot and dusty the day Governor Wallace stood in the "schoolhouse door"—and the day the University of Alabama was integrated by the admission of Vivian Malone and James Hood. I found the whole experience—the mass of reporters and nationwide TV, irritating.

In one sense it was a charade: The result was preordained. I had discussed with Robert Kennedy the necessity of letting Wallace posture in the door; there was no legal necessity. It was Kennedy's feeling

that we had to allow Wallace his "show" because otherwise he might, in frustration, permit the high feelings of his law enforcement personnel to get out of control as they had when Mississippi was integrated by James Meredith. There was no agreement with Wallace that I know of; just a belief that we had to pay that price to insure non-violence. And peaceful integration of the University of Alabama could be helpful in other integration situations.

There were important differences between Ole Miss and Alabama. The Department of Justice understood the problems better; the Kennedys were more prepared to use military personnel if necessary; and, most important, Chancellor Frank Rose had the courage and determination to integrate—really, not just symbolically—the University.

To me the single key factor in any move toward integration has been the genuine willingness of those in authority—whether they be governors, chancellors, school boards, or employers—to comply with the Constitution and laws voluntarily and in good faith. Frank Rose acted in that conviction, and the University is a far better institution today as a result—for whites and blacks.

Every now and then I see the University of Alabama play football on TV and I think of that June day. I bet Bear Bryant does too.

Nicholas deB. Katzenbach



James Vorenberg, former Executive Director of the President's Commission on Law Enforcement and the Administration of Justice, is Professor of Law at Harvard University. He is a member of LDF's Board.

LDF and Criminal Justice

The burdens of unfairness in criminal justice administration inevitably fall most heavily on blacks and other minorities and in many instances criminal sanctions have been used as a means of punishment for the assertion of equal rights. Legal Defense Fund lawyers have therefore frequently found themselves attacking unfair treatment of individuals by police, prosecutors, courts and correctional agencies. From *Powell v. Alabama* in 1932 in which the convictions and death sentences of the "Scottsboro Boys" were reversed because they were deprived of counsel to *Hutto v. Finney* in 1978 holding unconstitutional the Arkansas prison system's use of "isolation cells," an important part of protecting civil rights has been preventing or remedying abuses by criminal justice officials. And constitutional attacks have kept the criminal process from being used directly as a means to punish civil rights demonstrations.

LDF has been at the forefront of the campaign against capital punishment; its lawyers have argued in the U.S. Supreme Court the leading cases seeking abolition and have handled on a local level hundreds of appeals and motions of those facing execution.

A representative and unbiased jury to hear a criminal case and grand jury to decide on bringing charges are crucial to due process and unfair jury selection processes have been a target of LDF

litigation, as has unfair treatment of prisoners and denial to them of such basic rights as the exercise of their religion and of access to law books and other information they need to challenge their convictions.

James Vorenberg



Roger Wilkins is a columnist for *THE NEW YORK TIMES*. He was formerly an Assistant Attorney General of the U.S. He is a member of LDF's Board.

A couple of months ago, far south of Khartoum, I watched some tall, slender, very black Sudanese adolescents do a mating dance that seemed centuries old. I felt an intense rush of identity with them and with my African past. It was so strong that I felt giddy, but that passed in a moment.

It passed because no matter how proud I may be of the Africa in me, my identity is clear: I am a black citizen of a multi-racial nation and my identity was forged not only at home, but also in the streets and on the playgrounds of that nation—and mainly in its schools.

The answer to the question, "Who am I?" is profoundly important to people who are going to live out their lives in a society in which the races co-exist uneasily. It is important to black people and it is important to white people and neither group can learn the full answer to that question in isolation.

I can still remember the false lessons I learned on the busses I rode as a child in Kansas City, past the newer, nicer schools nearest my home to the much older black school that the law required me to attend. Newer was better, in my view as a five-year old kindergartner, and since the white kids had the newer school, they must be better, too. And, I can't imagine that the white kids, seeing us being carted off into the distance on our yellow bus, could have inferred much that was positive about our identities.

I think about those lessons often now when I look at young blacks moving into predominantly white corporations, financial institutions and law firms there to spend their lives in subtle and intimate struggles that will shape not only the approach of their corporation to the public, but taken en masse, may change the shape of the republic as well. The racial attitudes of much of this generation of the white supervisors of those young blacks are most likely to have been formed in schools where the races were isolated. Double woe then, to the young black who comes burdened by the myth of white superiority. But, woe as well to the corporation whose supervisors will not, in most cases, even be aware of their limitations in dealing with their fellow citizen subordinates who are black.

One of the best compliments I ever received was paid a couple of years ago by a white man named Bill—now a high corporate executive—with whom I attended high school many years ago.

"You were the first black I ever went to school with—or even knew, for that matter," he said. "I think that experience has stood me in better stead than anything else learned in those years."

I responded: "And I learned that you weren't superman. That was pretty valuable too." In learning about the other, each of us learned something even more important about himself.

It seems to me, after twenty-five years, that that is still basically what *Brown* is about.

Roger Wilkins

Legal Talent



Michael I. Sovern is Provost of Columbia University and former Dean of its Law School. He is a member of LDF's Board.

The twenty-five Civil Rights Legal Training Institutes the Legal Defense Fund held from 1966 through 1977 were a rare combination of intellectual trail-blazing and practice-rooted professional training. No single law school could have offered the depth and breadth of the lectures and workshops; or matched the motivation of the Institutes' "students"—the front-line lawyers fresh from the courtrooms and bargaining tables where law for minorities and the poor was being made almost daily.

The Institutes were characterized by legal scholarship of the highest order: Mark DeWolfe Howe of Harvard on State Action; Dean Robert McKay of New York University on School Desegregation; Dean Albert Rosenthal of Columbia on Employment Discrimination; Dean Albert Sacks of Harvard on Class Actions; Paul

Bender of the University of Pennsylvania on the Supreme Court; Anthony Amsterdam and the late Herbert Packer of Stanford Law School on Criminal Procedure; Monrad Paulsen of Virginia and Cardozo on Searches, Seizures, Confessions and Juvenile Offenses. Paul Miller of Howard, Stephen Duke of Yale, William Van Alstyne of Duke, and Caleb Foote of the University of California at Berkeley brought unequalled concentration of talent to bear on Capital Punishment issues. And this is only a sample.

As new opportunities arose with enactment of federal Civil Rights measures, and public interest law developed along lines the Legal Defense Fund had created, the Institutes kept pace. Hundreds of attorneys in practice shared experience as they came to grips with emerging legal problems. Participants from the Voter Registration Project, the Lawyers' Committee for Civil Rights Under Law, Mobilization for Youth, the U.S. Department of Justice and the Commission on Civil Rights joined in deliberations concerned with, among others, Title II on Public Accommodations, Title VII on Employment, and Title VIII on Housing.

When there were mass arrests, when HEW revised school desegregation guidelines, when there were questions regarding state and local authority's power to impose curfews and close down businesses, when new federal rules of evidence were introduced, lawyers' urgent questions were asked and answers hammered into shape.

To make the most of expert witnesses, experienced attorneys demonstrated how best to examine authorities in education,

employment, and statistics. For civil rights attorneys setting up their own firms, there were clinics on law office management.

The Institutes provided ferment. They spread knowledge hard won in practice. From their productive collaboration, the Legal Defense Fund seeded important gains for thousands of beneficiaries in every section of the nation.

Michael Sovern



The Legal Defense Fund served as the legal arm of the Civil Rights Movement, defending thousands of demonstrators. Shown here are from left—Bayard Rustin, coordinator of the March on Washington; Jack Greenberg, director-counsel, Legal Defense Fund; Whitney M. Young, executive director, National Urban League; James Farmer, national CORE director; Roy Wilkins, executive director, NAACP; the Rev. Dr. Martin Luther King, Jr., president, Southern Christian Leadership Conference; John Lewis, chairman, Student Non-Violent Coordinating Committee; and A. Philip Randolph, international president, Negro American Labor Council.

The Fund's ability to attack entrenched discriminatory practices proved effective because of incomparable support from cooperating attorneys, legal scholars, and authorities in many disciplines who augment staff efforts.

LDF cooperating attorneys carry forward the tradition that began when volunteer lawyers did all of the work. Often the exactly right plaintiffs for testing particular guarantees first appeared at offices of practicing attorneys who saw instantly that the cases warranted all-out Fund sponsorship.

Even when Thurgood Marshall and one secretary were the entire staff, he recruited a force with considerable experience. What a network they were, with Theodore M. Berry in Cincinnati; William H. Hastie and William T. Coleman in Philadelphia; Oliver T. Hill in Richmond; A. P. Tureaud in New Orleans; Earl Dickerson, Sidney A. Jones and W. Robert Ming in Chicago; Carl Johnson in Kansas City; George M. Johnson, James M. Nabrit, Jr. and Frank D. Reeves in Washington, D.C.; Z. Alexander Looby in Nashville; T. G. Nutter in Charleston, West Virginia; Sidney Redmond in St. Louis; and A. T. Walden in Atlanta.

Louis L. Redding of Wilmington is the cooperating attorney whose acumen helped make history in the Delaware school segregation cases. Arthur D. Shores of Birmingham is the cooperating attorney who nearly did not survive the turmoil there; one return for his pains was having his home destroyed by bombs. For a period, two colleagues gave so much of their time they served with modest retainers as LDF regional counsel: Spottswood W. Robinson, III in the Southeast, and U. Simpson Tate in the Southwest.

By the time the Fund had a legal staff of five it had even greater need for the cooperating attorneys. W. J. Durham of Dallas, and Amos T. Hall of Tulsa, were the lawyers to whom Heman Sweatt, Ada Lois Sipuel, and G. W. McLaurin first went for help when they wanted to enter their state university graduate schools.

Scholars and Leaders of the Bar

During the years that led up to *Brown*, faculty members of leading law schools actively helped plan and develop litigation strategy. Thomas I. Emerson, John Frank and David Haber at Yale, Earl G. Harrison at the University of Pennsylvania, Walter Gellhorn at Columbia, Paul Freund, Erwin D. Griswold and Benjamin Kaplan of Harvard were active collaborators. When the Supreme Court heard *Sweatt* and *McLaurin* in 1950, 187 law professors joined in submitting a friend-of-the-court brief.

When U.S. District Court Judge Louis H. Pollak was professor of constitutional law and Dean at Yale Law School and later Dean at Pennsylvania Law School, he argued LDF sit-in and voting rights cases before the Supreme Court. Dean Albert J. Rosenthal of Columbia has been active on LDF Title VII cases concerned with employment discrimination and Professor Kellis E. Parker of Columbia has helped prepare the *Geier* case directed at policies of segregation of the Tennessee system of higher education.

Professor James Jones of the University of Wisconsin has lectured on employment discrimination at a Fund conference held jointly with the National Urban League and the Urban Coalition. Professor Harry Edwards of the University of Michigan School of Law is a consultant and collaborator.

Anthony Amsterdam of Stanford University is the spearhead who leads Fund work on capital punishment questions. Professor Charles L. Black, Jr. of Yale continues to participate in several spheres of LDF planning in constitutional law.

Melvin Zarr, formerly of the LDF staff (now a law professor in Maine) told how Professor Amsterdam became intrigued when the State of Georgia petitioned the Supreme Court for a writ of prohibition. Georgia objected to cooperating attorney Howard Moore, Jr. of Atlanta having got the Fifth Circuit Court of Appeals to uphold use of an 1866 Congressional statute enabling demonstrators to be tried in federal rather than state courts. Zarr recalled:

"Amsterdam agreed, under Fund auspices, to prepare a response to Georgia's petition. Amsterdam asked Jack Greenberg for help, and I was deputized.

"That involved spending the next three weeks in Philadelphia with Amsterdam. We would arrive in his office before nine and work at a feverish pace until after midnight ... We turned out a sparkling one hundred-page document, and the Supreme Court denied Georgia's petition.

"At the next Fund lawyers' conference held in Atlanta in May 1964, a call from Mississippi came shortly before we were to return North. A large number of civil rights workers—the advance guard of the fateful Mississippi summer of 1964—had been arrested. This was our chance to build a successful removal case from the ground up, so we flew immediately to Jackson ... That night we worked in the old COFO (Council of Federated Organizations) office ... turning out removal petitions and all the legal paraphernalia that went with them.

"At this time we were fighting a paper war and were grossly unprepared. We had no secretaries and only a beat-up typewriter and mimeograph machine to work with. But Amsterdam rose to the occasion. Working semi-naked in the steaming one hundred-degree heat, he typed out the stencils, fixed the mimeograph machine, and ground out the papers. By 4 A.M., I decided to apply my hard-earned lesson and sought an hour's rest ... When I returned to the office, he had finished the job. We set off for Biloxi to find a federal judge ... "

In his book, "Cruel and Unusual", Michael Meltsner relates how Professor Amsterdam became a mainstay:

"To the overworked civil rights bar, Amsterdam was like the gift of a well-programmed legal computer; he vastly enlarged the Fund's capacity to go to court and win.

"In the critical mid-1960's, when massive black protests seemed likely to lead either to repression and defeat or to a new level of the struggle for an

America without institutionalized racism, he was rarely at home... He could be found commuting between Jackson, Atlanta, and New Orleans, munching hamburgers in an airport coffee shop, or banging away on a portable typewriter in a waiting room...

"... he became increasingly involved in, and finally came to manage, the Fund's growing docket of capital cases. Between 1965 and 1972 he spent no less than forty hours a week, every week of the year, representing capital case defendants."

There is reciprocity as LDF staff members accept law faculty chairs. Professors Norman C. Amaker at Loyola, Leroy Clark at New York University, Robert Belton at Vanderbilt, Philip Schrag and Jack H. Himmelstein at Columbia, Charles H. Jones at Rutgers, Sheila Rush at Hofstra, and William L. Taylor (former U.S. Commission on Civil Rights executive director) at Catholic University, Elizabeth Bartholet and Derrick A. Bell, Jr. at Harvard, Linda Green at Temple are some of the former Fund attorneys who now teach. Michael Meltsner is the new dean at Northeastern University Law School. Philip G. Schrag is on leave, working with the U. S. Disarmament Agency.

LDF cooperating lawyers are in public office. Henry L. Marsh, III is Mayor of Richmond, Ernest N. Morial is Mayor of New Orleans, while former staff attorneys, Frank E. White holds the position of Associate Director, Domestic Policy Staff, The White House and Drew S. Days, III now directs the Civil Rights section of the Department of Justice. U. W. Clemon is an Alabama State Senator, William Randall is in the Georgia legislature, Laurence Jackson and Eugene Thibodeaux have been public prosecutors. Arthur McFarland is a South Carolina city judge, and Gabrielle Kirk MacDonald has been nominated for a federal judgeship in Texas.

Soon after *Brown II*, a roster of leading American social scientists, historians, educators, and other specialists who had consulted with—

and/or had testified for—the LDF numbered 77. Among those especially valuable as sources and collaborators were Professor Kenneth B. Clark of the City College of New York, Presidents Horace Mann Bond of Lincoln University and Charles S. Johnson of Fisk University, and Professor Alfred McClung Lee of Brooklyn College. Dean Charles H. Thompson of Howard University, editor of the *Journal of Negro Education*, provided a flow of rigorous analysis.

The noted historian John Hope Franklin and the sociologist E. Franklin Frazier of Howard were consistently helpful, as were psychologist Otto Klineberg, Dean Whitney M. Young of the Atlanta University school of social work, later to become internationally famous as head of the National Urban League, Harvard professors Gordon W. Allport and Jerome S. Bruner, Princeton's Hadley Cantril, Drs. Hugh and Mabel Smythe of Brooklyn College, and scores more.

The calibre of LDF non-legal consultants and witnesses has exerted strong influence on court decisions in complex issues affecting schools, employment, housing, health, and other basic areas in the quality of life.

The Federal District Court decision in *Swann* ordered adoption of the busing plan devised by Dr. John A. Finger of Rhode Island College, who has since been chosen by courts to serve as their impartial arbiter, and has appeared as an LDF consultant.

LDF consultant Dr. Gordon Foster of the University of Miami drew up the plan that the District Court ordered used to desegregate Springfield, Illinois schools in 1976. He split the schools into four clusters.

Michael J. Stolee, Dean of the School of Education at the University of Wisconsin, testified in the Atlanta and Denver desegregation cases.

Dr. Richard S. Barrett, the industrial psychologist whose special expertise is test validation, has testified in a number of employment cases for LDF. Test validation is the process determining that a test performs some useful function and demonstrating "that the test is measuring what it is supposed to be measuring."

With Dr. Barrett's help, LDF pioneered in establishing the law which makes it illegal to use a test which has a disparate impact on blacks but does not predict ability to do the job.

Dr. John S. De Cani, chairman of the University of Pennsylvania's department of statistics, has made analyses of discrimination in selection of juries. Professor Hans Zeisel, Emeritus Professor of Law and Sociology at the University of Chicago Law School, has reported on juror attitudes toward the death penalty. The demographer Karl E. Taeuber testified that desegregation need not cause white flight.

In the Detroit police case Patrick J. Murphy, head of the Police Foundation and former New York City Police Commissioner, voiced his conviction that public safety is strengthened with employment of black officers in responsible leadership posts. Alan Fechter, the Urban Institute labor market analyst now with the National Science Foundation, projected how many black lieutenants would be working if the affirmative action program had begun sooner, and had it been conducted in keeping with its own criteria.

In the Georgia prison case of *Guthrie v. Ault*, the Fund brought in Dr. Kenneth Babcock, the first chairman of the Joint Commission on Hospital Accreditation and prison health consultant to the Department of Justice; Dr. Edward Delayne Robinson of Boston University School of Medicine who directs treatment for drug abuse at the Charles Street Jail, and Donald Goff, warden of the New Jersey Juvenile Detention Center. As a result of these LDF consultants' testimony the prison authorities made changes in conditions even before the first rounds of adjudication by the court.

Perhaps the largest infusion of trained legal talent to the leadership of the Fund's cooperating attorneys came about with and through its own legal training programs.

Scholars and Fellows

The Herbert Lehman Education Fund

"It meant a chance to get a quality education, and it means knowing all the time that there are those who care enough to give so that others may be educated."

—an alumna who received a Herbert Lehman Education Scholarship, now an accountant in Oxford, Mississippi

The LDF had overcome segregation barriers to the public colleges and universities in the South, but financial barriers remained. To find money that would help black students attend newly-desegregated colleges, the Herbert Lehman Education Fund was initiated in 1964. The Fund memorialized the name of former Governor and U.S. Senator Lehman who was one of LDF's seven incorporators.

Since then well over 1,700 students have received scholarship awards. A recent sampling of less than two hundred of the graduates showed 92 attorneys and three judges, 15 in the medical profession, 12 professors, and 12 corporate executives.

The Earl Warren Legal Training Programs:

In 1954 there were 248 black members of the bar in all of the South. Mississippi had one.

The explosive growth of civil rights litigation after the *Brown* decision made the need for substantially more black lawyers imperative.

The Lehman Fund awarded some law school scholarships in the 1960's, but substantial increase demanded a more concentrated, intensive effort. In 1972 the LDF established the Earl Warren Legal Training Program, Inc. With the former Chief Justice's blessing, the Legal Defense Fund board of directors launched a two-pronged attack on the problem.

• **Law School Scholarships.** The combined Herbert Lehman and Earl Warren programs have awarded nearly 1,000 grants to law students at 81 accredited law schools. The great majority who have completed their professional training now practice law in the South. They are an important reservoir of talent for elected and appointed civic office. Pursuing their

careers in cities and towns that in many instances have seen few black professionals, they earn respect of the white community while providing leadership among blacks and serving as models for youngsters.

• **The Earl Warren Fellows.** The Fellowship program selects a few law school graduates of highest promise each year. It brings them to the LDF office, or to a cooperating Fund attorney, for an intense one-year internship working on civil rights cases. Each Fellow is then given financial help to rent and equip an office and start a law library, and receives a diminishing income subsidy for three years.

This assistance enables the Fellow to accept civil rights cases that can drag on through numerous appeals and delays, most of them paying very little, if anything, to the attorney. LDF staff and cooperating attorneys stand ready to join the Fellow as Co-counsel when needed and advisable.

What does this support mean to the newly-fledged lawyer?

Arthur C. McFarland—who came back to Charleston, South Carolina in 1974 as an Earl Warren Fellow and has since become a Municipal Judge—states: "I had been out of law school less than a year, and there I was as an intern arguing a case in Federal Court with some of the best lawyers in the country. The experience really got me going. I said 'hey I'm on my way to being a top-notch lawyer.' The guys I graduated with were probably being stuck in some Wall Street firm's law library."

What does this mean to the white community?

One late afternoon in Little Rock, Arkansas in the conference room of the city school board four men—three of them white, one black—hunched intently over a large map that is crisscrossed like a crazy gameboard with vari-colored county lines, district lines, racial-residential lines.

The white men are School Board members. The black man is John Walker, a 1964 Yale Law School graduate, who came home to Arkansas as an LDF Fellow and kept the Board in court for seven years, demanding that it integrate

Little Rock schools. The years of shared arenas and bared passions have engendered a familiarity that is almost a camaraderie among them. Today they converse over the map, talking quietly about moving some of these kids across here, and taking these kids from over there ... their gestures like those of gamblers sliding a pile of chips. Together they are trying to elaborate the formula, to perfect the plan, to achieve for the schools the greatest racial, economic, and social heterogeneity—a plan for which John Walker is given credit as the "mastermind."

What does this mean to the black community?

"There's no question that we've created lots of job opportunities for blacks, just because people knew we'd sue if they didn't open things up," Walker explains during a brief recess during the deposition he is taking from a young white woman describing her rapid rise in a local bank's hierarchy, the bank's counsel sitting next to her. Walker is suing the bank.

"All the banks have hiring quotas now, and in the last few years their percentage of black employees has increased from just over one per cent to nearly 20 percent."

"I believe that our work has helped create an attitude here among black people—that if white folks try to push them around they'll sue," he adds. "They're coming to believe that the law can be their ally instead of their oppressor."

There is no question that Joe Hudson has filled a void of leadership and expertise in Gulfport, Mississippi. As John Simmons, president of the Pearl River County NAACP, explains, "Before Joe came to Mississippi, we had nobody to help us. We had all these issues we knew we had to deal with—all kinds of school things and voting projects—but we just didn't know how to go about it. I'm a diesel mechanic ... I don't know anything about 'show cause' orders."

To the black community, Hudson is like a son, a father, a missionary, a warrior. He is the one who can effectively confront what is, and who can articulate what could be. As Dr.

Felix Dunn, a prominent black spokesman in Gulfport, explains it. "We're proud of that boy; he's our rising star. He gives us hope because he knows how to deal with the system in *s* words, on *its* terms ... they can't throw *him* out the door."

Hudson has provided free legal counsel to the major black civic clubs in the area, and his office often serves as a place to draft and polish a letter, resolution, or statement setting forth the positions of black organizations.

"These civic groups consist of good, civic-minded people, but they often lack the organizational or verbal skills to market their positions effectively," Hudson says. "I'm trying to make them realize the tremendous potency of an organized group in achieving social change."

Hudson is perpetually involved in the issues of the area, serving on ad hoc committees to get a black on the school board, obtain legal services programs, develop minority business funding opportunities and affect school consolidation deliberations.

"In general, I think of myself as the lawyer for these causes, not the spokesman," Hudson explains. "People are tired of rhetoric, but nothing will ever get done unless someone is willing to be on the plodding end of things, to deal with the day to day drudgery of reform."

Engaging in civil rights litigation is another way in which Hudson has assumed responsibility for the painstaking requisites of change.

The Earl Warren scholars and fellows have had an impact out of all proportion to their numbers. (The Earl Warren scholarship program has added more than 500 black lawyers to the legal community—80 percent of them in the South—who now work in government, business, and general legal practice. Eighty-five Earl Warren Fellows now practice law throughout the South.) As judges, assistant United States Attorneys, elected and appointed officials in policy-making posts—and in the day-in, day-out battle for the realization of rights—they provide important black leadership throughout the South.

The Legal Defense Fund as Model

When any person is treated unjustly, the rights of all people are vulnerable. Guarantees of opportunity for any American can be no more secure than their application to every citizen. As the Fund's litigation campaign succeeded, the rights defined by courts in its cases had to apply to all.

Robert B. McKay, former Dean of New York University Law School, director of the Aspen Institute Program on Justice, Society and the Individual, has written that even though the 1954 Supreme Court decision in *Brown v. Board of Education* "was eloquent and straightforward," even

"the clearest constitutional mandate is not self enforcing ... every step along the way, from the express ruling through various steps of legislative and administrative action, can and often does serve as a basis for challenge by opponents. If the guard is let down, the constitutional principle is again at risk. To protect against this hazard requires commitment, competent personnel, and considerable financial resources.

"Until at least the mid-1960s the NAACP Legal Defense and Educational Fund stood almost alone in this effort. Although the LDF, as it is popularly known, had as its principal mission the protection of blacks against all forms of racial discrimination, it recognizes that success in this work might well be jeopardized if it were not accompanied by efforts to secure protection for

other groups against whom discrimination was being practised on grounds of race, religion, ethnic background, or sex. Accordingly, the LDF has all along been a champion of all who suffer from discrimination."

From the Fund's earliest years its lawyers took cases that sought justice for native Americans, Hispanics, and minorities other than blacks. In 1968, the LDF helped formulate plans for and secured funds to establish the Mexican-American Legal Defense Fund (MALDEF).

Fund staff attorneys took leadership in working closely with new organizations modeled after the LDF. Vilma Martinez, now the President of MALDEF, and Margaret Fung, of the Asian-American Legal Defense and Educational Fund were Fund colleagues; their statements appear in this publication.

The Puerto Rican Legal Defense and Education Fund opened its office in New York in mid-1972. It initiates many of its own cases and serves as co-counsel with the LDF and other public service law groups.

Marion Wright Edelman, one of the Fund's first legal interns, founded the Childrens Defense Fund in 1973 to provide systematic, long-range advocacy for the nation's children.

Michael Meltsner, former LDF assistant special counsel, served as co-director of Columbia Law School's clinical Legal Assistance Resource; he is now Dean of Northeastern Law School; Elizabeth Bartholet and Deborah

Greenberg, former LDF lawyers, became directors of the Legal Action Center of the City of New York, launched by the VERA Institute of Justice; now with its own board of directors, the Center helps ex-addicts and former prisoners get fair treatment, and works on test cases limiting public employers' discriminatory practices against former drug offenders. LDF cooperates with The Women's Law Fund, organized in Cleveland in 1971 and works with other women's rights groups to identify patterns of sex discrimination in public and private employment and advises on litigation programs. Under Jean Fairfax's direction, the LDF's Division of Legal Information and Community Services has convened national workshops seeking to increase the number and effectiveness of minority women lawyers.

Stirrings Elsewhere

President Carter's International Human Rights Program has its roots deep in the historical values of our civilization. In more immediate terms it may be traced, of course, to the *Brown* decision which demonstrated to the world that human rights progress, under law, is indeed feasible. Regularly over the years lawyers and judges from around the world visit the office of the Legal Defense Fund to discuss our programs and policies, and learn whether they can be adapted to their own situations.

The British home office has sent a representative to study American race relations to see if what has been done here offers guidance for solving Britain's growing racial problems. A great deal of this time was spent at LDF learning how private organizations litigate to effect social change. In 1978, Jack Greenberg visited South Africa and consulted on establishment of a public interest law firm, the Legal Resources Center, which is bringing test litigation involving labor, housing, consumer and pass law issues. Public interest law firms have been established in Kenya and Colombia.

At the 25th anniversary celebration of *Brown v. Board of Education* human rights advocates from Tanzania, India, Jamaica, the Sudan, South Africa and elsewhere will discuss what LDF's experience means to them.



Vine Deloria, Jr. is Chairman of the Institute for the Development of Indian Law, author of "Custer Died for Your Sins" and "Behind the Trail of Broken Treaties," and former Executive Director of the National Congress of American Indians.

The Brown Strategy

Nearly a decade and a half ago the political leaders of the American Indian community met with Jack Greenberg to discuss the strategy employed by the LDF Fund in bringing about the historic *Brown* decision. Since that time a number of Indian legal organizations have been created to deal with the great mass of complex questions which make up the field of Indian law. Since we are still in the initial stages of exploring the parameters of this field our record of success is uneven but consistently aggressive in bringing questions to a degree of sharpness for resolution.

Looking again at the program of the Fund I am still impressed with the sophisticated blend of jurisprudence, social science, and law that produced the most fundamental decision in the history of American law. The careful analyses of questions of race, equality, and citizenship rights which composed the *Brown* strategy remain a goal for us yet today in resolving some of the pressing social issues of our generation. Rarely do we find today the ability to frame and understand basic political and jurisprudential problems which remain in the realm of half conscious ideas and prevent the realization of full legal rights for all citizens which *Brown* illustrates. That this program remains the premier instance of constructive social change is eloquent testimony to its philosophical and constitutional validity.

All groups benefitted from the *Brown* decision. Providing substance for constitutional phraseology which had long lacked an ability to protect human rights, the *Brown* decision produced an era of social progress and concern for human rights unprecedented in American history. Within this context of maturity substantial gains have been made by every identifiable minority in this country. It is therefore proper and fitting that on this anniversary we take heart from the successes of the past and see in them a command for move forward on the march to full social and political equality and opportunity for all people.

Vine DeLoria



Margaret Fung is Executive Director of the Asian-American Legal Defense Fund.

The twenty-fifth anniversary of *Brown v. Board of Education* provides an appropriate occasion to measure the gains achieved by racial minorities in America. For Asian-Americans, the most blatant forms of discrimination—the internment of Japanese-Americans during World War II, segregated schools for Chinese and Japanese, racially exclusionary immigration quotas, racial restrictions on citizenship—have been abolished. However, other more subtle forms of racism persist, despite the widely-held misconception that Asian-Americans have risen above discrimination to success in

our society. As a result of the civil rights movement and the war in Vietnam, Asian-Americans have come to recognize the importance of dispelling myths about the Asian "model minority" and the need to draw attention to our society's neglect of Asian-American concerns—especially those of the poor, the non-English-speaking and the newly-arrived immigrants.

Following the example of the NAACP Legal Defense Fund, the Asian-American Legal Defense and Education Fund (AALDEF) was founded in 1974 to protect the civil rights of Asian-Americans through community education programs and through litigation in the areas of employment, housing, immigration and alien rights. In addition, AALDEF has set up recruitment programs designed to increase the number of Asian-American attorneys; internship programs to train Asian-American law students for community oriented legal work; and a network of multilingual cooperating attorneys to insure that Asian-Americans have access to the courts. These programs, established with the encouragement and assistance of the NAACP Legal Defense Fund, represent only the first steps toward securing full participation for Asian-Americans in all aspects of our society. However, the NAACP Legal Defense Fund, with its impressive array of legal victories and innovative educational programs, has demonstrated the enormous impact that the law can exert to further equal rights for all racial minorities. Although AALDEF is still a young organization, we hope to confront the unique legal issues facing the Asian-American community with the same creativity and dedication that have consistently characterized the NAACP Legal Defense Fund's efforts over the past four decades.

Margaret Fung



Father Theodore M. Hesburgh, C.S.M., President of the University of Notre Dame, served as Chairman of the U.S. Commission on Civil Rights.

Our country's civil rights record made great improvements during the sixties, but progress slowed down and flattened out during the seventies. Twenty-five years ago in *Brown v. Board of Education*, the Supreme Court upheld the Fourteenth Amendment in the clearest possible way. Twenty-two years ago, Congress passed the first of two Voting Rights Acts. It is now fourteen years since it forbade discrimination in jobs, public accommodations, and virtually every aspect of life. Yet we are still reluctant to obey our own laws.

As a U.S. Commission on Civil Rights member from 1957 until 1973, I kept learning about, and helped make public, evidence of widespread noncompliance. North and South, city schools were and still are overwhelmingly segregated. Unemployment and job discrimination are still harsh facts of life for millions of black citizens. Decent housing for all remains an empty promise for many minorities.

The Commission is an advisory body. It lacks power to put recommendations into effect. By making facts known, it serves as a conscience. In 1967 we reported how, in our 20 largest cities, school segregation was severe and growing worse. In 1974 it told how in five states Chicano children need better schooling through bilingual programs, more Chicano teachers, and prohibition of at-large school board elections. The Commission also called for actions in housing that year; subsidies and zoning reforms allowing blacks to live in suburbs, real law enforcement by HEW

and the Justice Department, and state agencies with power to override barriers to open housing as a condition for HUD grants.

The late Vivian Henderson, President of Clark College, testified before another pertinent federal advisory Commission—appointed to study causes of riots after the murder of Dr. King. "No one can deny that Negroes have benefited from civil rights laws and desegregation in public life in one way or another," he said, "The fact is, however, that the masses of Negroes have not experienced tangible benefits in a significant way... There have been important gains. But the masses of Negroes have been virtually untouched by those gains."

The white majority hears about court decisions, laws, the increase in black college enrollment, and the growing black middle class. It assumes, in ignorance, that problems are largely solved. The black minority sees laws unenforced, the dismal state of urban public schools, black youth unemployment as high as 50%, and knows that major problems still fester.

The Legal Defense Fund's patient, relentless litigation is in large part responsible for fundamental strides forward. If we add to its resolute effectiveness with a renewed national commitment, the future for equal justice will visibly brighten.

Theodore Hesburgh



Vilma Martinez is President of the Mexican-American Legal Defense Fund.

Throughout the ten years' work of the Mexican-American Legal Defense and Educational Fund (MALDEF), we have looked to the NAACP Legal Defense Fund as an important forerunner and an essential supporter.

Jack Greenberg, LDF's Director-Counsel, played a critical role in MALDEF's founding. He helped us obtain our first grants; he helped us to organize; and he served as an important advisor on our board.

LDF-sponsored civil rights legal training institutes held in Lake Tahoe and Bandera, Texas before MALDEF's founding in 1968, served as important training tools for Chicano lawyers throughout the Southwest. For the first time, a broad range of Mexican-American attorneys were given the chance to discuss their common civil rights legal concerns and to gain valuable information about civil rights litigation techniques.

LDF-trained attorneys have served as valuable members of our staff and I, myself, received my first legal experience as an LDF staff attorney. Precedents and strategies developed by LDF have been useful to MALDEF and our joint efforts over the years have led to important reforms.

Today many of our concerns are identical: segregated schools, employment discrimination, at-large elections that minimize the minority vote, police brutality and other issues. Like LDF, we are at work to increase the number of civil rights lawyers among our people.

Victories won by either organization benefit the work of both. We draw strength

from each other; we make progress together.

Vilma Martinez

The Legal Defense Fund Today



"For Thurgood Marshall, the articulate, immensely brainy Coleman was a gem of special magnitude in the collection of superior intellects with which he was now surrounding himself."

Richard Kluger in
Simple Justice

William T. Coleman, Jr.

An ardent defender of civil rights, William T. Coleman, Jr. was one of the authors of the legal brief in *Brown v. Board of Education*. A *summa cum laude* graduate of the University of Pennsylvania, a *magna cum laude* graduate of Harvard Law School who had served as a Harvard Law Review Editor, Coleman was law clerk to Justice Felix Frankfurter. He has had a distinguished career in law, business and public service that includes being Secretary of Transportation and holding

advisory or consultant positions to five former Presidents of the United States. Today, he is a senior partner in the law firm of O'Melveny & Myers of Washington, D.C., Los Angeles, California and Paris, France. He is also Chairman of the Board of the NAACP Legal Defense and Educational Fund, Inc., on which board he has served for almost all of his legal career.

As Felix Frankfurter's law clerk, he was the first black lawyer ever to clerk in the High Court. When Coleman left Frankfurter's service, the Justice wrote him: "What I can say of you with great confidence is what was Justice Holmes' ultimate praise of a man: 'I bet on him.' I bet on you, whatever choice you may make and whatever the Fates may have in store for you."

In addition to serving as President Ford's Secretary of Transportation from March 1975 to January 1977, Mr. Coleman has been a member of the U.S. delegation to the 24th session of the United Nations General Assembly in 1969; member of the National Commission on Productivity from 1971-1972; member of the Price Commission from 1971-1973; consultant to the U.S. Arms Control and Disarmament Agency from 1963 to 1975; senior consultant and counsel to the President's Commission on the Assassination of President Kennedy in 1964; and a member of President Eisenhower's Committee on Government Employment Policy from 1959 through 1961. In 1965 he was

retained by Governor William Scranton of Pennsylvania to assist in removing racial restrictions at Girard College in Philadelphia.

Mr. Coleman also serves on the Board of Directors of I.B.M., Pan American World Airways, PepsiCo., AMAX, Inc., the American Can Company, Chase Manhattan Corporation, INA Corporation, and the Philadelphia Electric Company. He is a trustee of the Rand Corporation, the Brookings Institution, the Philadelphia Museum of Art, of which he is also Vice President, and is on the Board of Overseers of Harvard University, is Vice Chairman of the Committee to Visit the Harvard Law School, a member of the Board of Overseers of the University of Pennsylvania Law School, and a member of the board of the Smithsonian Associates.



"... I feel there are very few people you meet in life that you would be willing to trust with everything you have ... I feel that way about Julius ..."

Dr. Raymond Wheeler,
former President
Southern Regional Council

Julius LeVonne Chambers

Julius LeVonne Chambers, often described as mild-mannered and serious-minded, has built an impressively active and eventful civil rights legal career. At 12 years old he knew he wanted to be a lawyer. Until his college years, he attended segregated public schools.

Julius Chambers is President of the NAACP Legal Defense and Educational Fund. Prior to his election as the Fund's President, he served as a member of the Fund's Board of Directors. Chambers' affiliation with the Legal Defense Fund dates back to the start of his legal career when he became the first of 89 interns given special training in civil rights law by the Legal Defense Fund. He is an honors graduate of the University of North Carolina Law School, where he was Editor-in-Chief of its Law Review. Among his many scholastic achievements are an LL.M. degree from Columbia University and Honorary LL.D degrees from North Carolina Central University and Johnson C. Smith University.

After Julius Chambers' one-year internship in civil rights law with the Legal Defense Fund, he returned to North Carolina and established the law firm of Chambers, Stein and Ferguson,

North Carolina's first interracial law firm. He filed numerous law suits to enforce compliance with civil rights law in his home state. He quickly became a force to be reckoned with as he argued and won cases in school segregation, employment discrimination and the exclusion of blacks from juries. He is best known for his role in the Legal Defense Fund's fight to integrate Charlotte public schools. Chambers argued before the Supreme Court *Swann v. Charlotte-Mecklenburg Board of Education*, building on the groundwork of *Brown v. Board of Education*. *Swann* was the first case to require dismantling of segregation root and branch. In 1971 his office was gutted by fire. Terroristic attacks on Julius Chambers date back to 1965 when his home and car were bombed while he and his family were asleep.

Julius Chambers has received many honors. Columbia University in 1971, in recognition of his civil rights leadership, awarded him the University Medal of Excellence.



"Greenberg has risen to become perhaps the most knowledgeable and successful civil-rights lawyer in America."

Richard Kluger in
Simple Justice

Jack Greenberg

No lawyer, still in active practice in the United States, has played as significant a role in the development of civil rights law as Jack Greenberg. A recent recognition of his contribution came in October 1978 when he was one of three recipients of the second Grenville Clark Award for public service.

The New York Times, in an editorial, commented on his achievement: "The Grenville Clark Prize has just been given to three men who in separate ways have fought the injustice of racism: the Rev. Theodore Hesburgh, president of Notre Dame University; Jack Greenberg, Director-Counsel of the NAACP Legal Defense Fund; and Sydney Kentridge, the South African lawyer who appeared for Stephen Biko's family at the inquest into his death. The priest who speaks for a universal conscience, the American lawyer who works through a responsive legal system to end discrimination, the South African advocate who stands up to an overwhelming state: This year's awards attest to the power of the committed individual."

Its only previous recipient has been Jean Monnet.

In 1949, a year after graduating from Columbia University School of Law, Jack Greenberg joined Thurgood Marshall as an associate and immediately began work on cases that integrated law schools and graduate schools (*Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents*). In 1954, he was the lawyer who argued the Delaware portion of *Brown v. Board of Education*. After *Brown*, he tried cases which struck down segregation in public parks, beaches and transportation and racial discrimination in voting, jury selection and criminal trials.

In 1961, when Thurgood Marshall was appointed to the U.S. Court of Appeals for the Second Circuit, LDF's Board of Directors elected Jack Greenberg Director-Counsel, a post he has held since then. Soon after his election, Greenberg and the LDF staff were confronted with the legal challenges springing from the civil rights movement and represented thousands of civil rights demonstrators, including Dr. Martin Luther King, Jr., and now Ambassador to the United Nations, Andrew Young.

In 1967, Jack Greenberg established a coordinated national drive to abolish the death penalty because of its racially discriminatory impact. Since the effort began—with the exception of Gary Gilmore who wanted to die—it has resulted in a moratorium on executions.

The employment discrimination program developed by LDF has won landmark cases in the field—securing job rights for thousands of minority workers. In 1971, Greenberg argued and won *Griggs v. Duke Power Company* before the Supreme Court, guaranteeing black workers equal employment opportunities.

Jack Greenberg has developed the work of the Fund in other areas, including assertion of the rights of poor persons. He persuaded the Ford Foundation to establish the Mexican-American Legal Defense and Educational Fund, with a grant of \$1 million.

In 1972, LDF established the Earl Warren Legal Training program which has helped 1,121 black law students complete law school.

In August 1978 he was invited to Johannesburg, South Africa, where he met with lawyers interested in starting a public interest law firm. He advised them on practical issues of case selection, staffing, financing and budgets, and shared his experiences and thoughts on the viability of such a program. The firm has recently begun functioning.

Under Jack Greenberg's leadership, LDF has grown from half a dozen lawyers to today's staff of 25 who, working with a network of 400 cooperating attorneys, handle approximately 1,000 cases.



"Yale Law School graduate James Madison Nabrit, III... had been weaned on the plans that brought The School Desegregation Cases to the Supreme Court...."

Michael Meltsner in
Cruel and Unusual

James M. Nabrit III

There was never any question that James M. Nabrit III would be a civil rights lawyer. As an undergraduate at Bates College in Lewiston, Maine, he wrote his thesis on school integration law. Three months after he entered Yale Law School in the Fall of 1952, he sat in the United States Supreme Court and listened to his father, James M. Nabrit, Jr., argue the District of Columbia portion of *Brown v. Board of Education* and the companion cases.

In 1959 he joined Thurgood Marshall, Jack Greenberg, Constance Baker Motley and Elwood Chisolm who constituted the entire Legal Defense Fund legal staff. He began work immediately on cases that would result in significant advances in civil rights law.

Michael Meltsner, in his book "Cruel and Unusual," describes some of the qualities that Jim Nabrit brought to LDF: "an imposing technical skill" combined with "great prudence. At free-wheeling strategy sessions, Nabrit defined the limits of the possible... his was the hard head that reminded all that nothing could be accomplished without craft."

He participated in trials or appeals in school desegregation cases involving communities in North Carolina.

Louisiana, Arkansas, Florida, Georgia, Alabama and Tennessee—handling the appeal in the first U. S. Supreme Court decision banning racial segregation of public school teachers in Richmond, Virginia. In fact, he would spend a good deal of time in Virginia in the next few years working with Spottswood W. Robinson, III and Frank D. Reeves. Nabrit represented the first black children to actually gain admission to white public schools in Virginia in 1959.

The State of Virginia attempted to immobilize LDF with various provisions in the "massive resistance" legislation passed after *Brown*. Nabrit successfully fought the state's efforts to get a list of LDF's Virginia contributors. At the same time, he was working on the sit-in and freedom-rider cases, over 40 of which went to the Supreme Court, virtually all of them won by LDF.

He participated in *Simkins v. Moses Cone Memorial Hospital* in which the Supreme Court invalidated the "separate-but-equal" clause of the Hill-Burton Act and handled the trial and appeal of *Lankford v. Gelston*—the first case in which an injunction was issued against a city police force (Baltimore, Maryland) to enforce the Fourth Amendment prohibition against a pattern of illegal searches of homes. In all, he has orally argued 11 cases in the U. S. Supreme Court establishing principles and moving civil rights law forward in several areas. In education, he argued *Monroe v. Board of Commissioners of Jackson, Tennessee*, which established the principle of affirmative action for school desegregation plans; *Swann v. Charlotte-Mecklenburg Board of Education* in which Chief Justice Burger, writing for a unanimous Court, stated "... bus transportation has long been a part of all public educational systems and it is unlikely that a truly effective remedy could be devised without continued reliance on it."; and *Keyes v. School District No. 1, Denver, Colorado*, the Supreme Court's first non-Southern school decision which ordered desegregation of the entire Denver public school system.

Jack Greenberg says of him: "He is indispensable at LDF. The depth of his knowledge, his good judgments, and his

profound dedication have made LDF the superb law firm it is."

He has been Associate Counsel of the Legal Defense Fund since 1965.

National Officers

Chairman of the Board William T. Coleman, Jr	Treasurer Lois Cowles
President Julius LeVonne Chambers	Director-Counsel Jack Greenberg
Vice President Wiley A. Branton	Associate Counsel James M. Nabrit, III
Secretaries George D. Cannon Constance Lindau	

Board of Directors

Mrs. Henry Aaron	Mrs. Elliott M. Ogden, Jr.
Mrs. Farrow R. Allen	Estelle M. Osborne
Eleanor S. Applewhaite	Robert S. Potter
John T. Baker	Robert H. Preiskel
Mrs. Robert S. Benjamin	Harriet Rabb
Helen L. Bittenwieser	Maxwell M. Rabb
Ramsey Clark	F. F. Randolph, Jr.
William K. Coblentz	Mrs. Samuel I. Rosenman
Ossie Davis	Harvey C. Russell
Peggy C. Davis	Bayard Rustin
Adrian W. DeWind	William H. Scheide
Anthony Downs	Orville H. Schell
Charles T. Duncan	Bernard G. Segal
Marian Wright Edelman	George Simkins, Jr.
Christopher F. Edley	Michael I. Sovern
Helen G. Edmonds	Asa T. Spaulding
David E. Feller	Shirley Verrett
Clarence Clyde Ferguson	James Vorenberg
H. Minton Francis	Chauncey L. Waddell
Norman Francis	John W. Walker
Marvin E. Frankel	William O. Walker
John Hope Franklin	Robert C. Weaver
A. G. Gaston	M. Moran Weston
Robert W. Gilmore	Roger Wilkins
Charles V. Hamilton	E. Thomas Williams
Eliot Hubbard, III	Claude Young
Catherine Huber	
Frank N. Jones	
Jetta N. Jones	
Anna Julian	
Harry Kahn	
Nicholas DeB. Katzenbach	
Amalya Kearse	
Ronald P. Klein	
Lewis E. Lehman	
John G. Lewis, Jr.	
George E. Marshall, Jr.	
Robert McDougal, Jr.	
Mrs. Albert W. Merck	
L. D. Milton	
Paul Moore, Jr.	
E. Frederick Morrow	
James M. Nabrit, Jr.	

Staff*

Counsel

New York Office
Director-Counsel
Jack Greenberg

Associate Counsel
James M. Nabrit, III

First Assistant Counsel
Charles Stephen Ralston
Lowell D. Johnston

Assistant Counsel

Joel Berger
John Charles Boger
Ronald L. Ellis
Deborah Fins
James C. Gray, Jr.
Bill Lann Lee
Beth Joan Lief
Clyde E. Murphy
Patrick O. Patterson
Judith A. Reed
Eric Schnapper
O. Peter Sherwood
Steven L. Winter
Napoleon B. Williams, Jr.
Gail J. Wright

Washington, D.C. Office

Assistant Counsel
Elaine R. Jones
Barry L. Goldstein
Brent E. Simmons

Legal Division

Donna S. Gloeckner,
Director of Library Services
Margaret A. Gonzalez, Clerk

Statisticians/Researchers

Lester Jones
Joshua Tankel
Martin L. Mador

Paralegals

Carol Palmer—**New York**
Nancy Hart-Russell
Washington, D.C.

Executive Secretaries

Norma M. Lewis
L. Marlene Kornegay

Support Staff

Secretaries
New York
Aylmer Ahjohn
Joyce C. Alexander
Audrey G. Fleher
Doris E. Hendricks
Marie M. Ismail

Jewell Johnson
Gloria Jones
Daphne McFarlane
Mary Murphy
Gertrude Reynolds
Monica Y. Wallace
Marcella G. Williams

Washington, D.C.

Karen Blair
Ava J. Winston

Division of Legal Information & Community Services

Jean E. Fairfax, **Director**
Lolita Livingston, **Administrative Assistant**
James Sanders, **Program Assistant**

Deputy Directors

Allen Black, Jr.—**San Francisco**
Phyllis McClure—**Washington, D.C.**
Robert Valder—**North Carolina**

Support Staff

Yvonne Cecile Alden
Bernice Becker
Susie A. Webber

Educational Programs

Dr. John W. Davis
Consultant,
Herbert Lehman Educational Fund
Program

Butler T. Henderson
Director,
Earl Warren Legal Training
Program, Inc.

Support Staff

Edna Stewart,
Coordinator of Grants &
Reports

Secretaries

Serena D. Hilberry
Ernestine Ward

Development Staff

New York Office
Betty J. Stebman
Director

Rufus W. Smith
Special Gifts/Bequests

James R. Robinson
Direct Mail

Anne T. Dowling
Foundations/Public Information

Malcolm W. Rucker
Corporations

Louise Frillmann
Genevieve Brown

Special Events—
Brown 25th Anniversary Program 64

Regional Coordinators

Cecilia Van H. Ives
Boston, Massachusetts
Stephanie Lee-Miller
Los Angeles, California
Linda K. Schleifer
Philadelphia, Pennsylvania
ViCurtis Hinton
Washington, D.C.

Support Staff

New York
Mac L. Bush
Theda Jackson
Betty S. Kennedy
Rebecca Kennedy
Mildred Simon
Jacqueline Smothers

Boston

Yvonne Fuller

Los Angeles

Malissa Simpson
Howard Fishman

Philadelphia

Sue H. Moore

Washington, D.C.

Shirley Bergen

Finance Department

Alfred A. Lewis
Comptroller

Peter O. Judd
Assistant Comptroller

Support Staff

Arlene V. Arnold
Head Bookkeeper

William D. Leach
Bookkeeper

Brenda A. Capers
Bookkeeper

Esme Sheriffe
Secretary to Comptroller

General Administration

Personnel
Jennifer Rutledge
Manager

Ivalina Passé
Assistant

Office Services

Arlene Walton, **Business Manager**
Velma B. Harris, **Switchboard Operator**
Thelma M. Bazin, **Files Clerk**
Earl Cunningham, **Utility Clerk**
Oscar Fambro, **Utility Clerk**
Ernestine Pratt, **Legal Files Clerk**
Carol Clare, **File Clerk**

Financing Legal Redress

Needed: Gifts, Grants, and Bequests

In large part because of the Legal Defense Fund program, court actions that often require years to wind their way to final decision are no longer an exclusive luxury of the rich. But justice still costs money.

The LDF has managed to pay its bills through successive improvisations. It has been several times in such deep trouble there was serious doubt whether LDF attorneys would have the means to keep pace with rapidly expanded litigation.

In 1980 the Fund marks its 40th year. In all that time it has been in constant need of instant money. More than 60,000 contributors, of all races, in every part of the United States, provide about half of the current annual \$4.5 to 4.7 million budget. Foundations furnish vital project grant support for specific program elements. Corporations making three-year pledges, through the 40th Anniversary Campaign, are a growing, essential source of assistance.

In some recent years the Fund was able to meet rising costs only by using the resources in its well-managed but steadily shrinking reserve fund. In 1977, for example, it had to sell \$331,000 from this precious reserve.

Operations continue to be frugal. In employment cases it is normal for the Fund to be pitted against opposition counsel who receive as much per hour as LDF lawyers get per day.

Bequests, large and small, have served as the underpinning. Considering how faithfully many thousands of supporters have given to its work over the decades, the small number who provided for the LDF in their wills—fewer than 120—is surprising.

We invite friends who have not made such provision to consider doing so.

Key American civil rights victories brought about through Fund actions owe much to generous bequests from the inventor of xerography Chester Carlson, from Mrs. Randolph Compton, industrialist Fowler McCormick, and philanthropist Eliot Pratt. The late publisher George Backer, artist Russell Cowles, actor Edward G. Robinson, Harlem physician Richard H. Dobson, Jr., novelist Edna Ferber, lawyer Walter Frank, Sidney Gerber of Seattle, Ms. Gladys Grant, and Amsterdam News publisher C. B. Powell are some of the friends who made sure that their thoughtfulness could continue.

All bequests to the Legal Defense Fund are allowed as charitable deductions under present federal and state laws.

Fund officers and members of the Board of Directors welcome inquiries and discussion with attorneys, investment counselors, and trust officers regarding contemplated bequests in the form of securities, real estate, current or new life insurance policies; charitable gift annuities, pooled income or charitable remainder trusts; collections of

art, stamps, coins, or other appraised memorabilia; patents, royalties, copyrights, mineral and oil leases, or other property.

Financial Needs

Budgetary Goals/ 40th Anniversary Campaign/1978—1980

If the goals of the 40th Anniversary Campaign are met, LDF will be able to expand the scholarship and fellowship program and rebuild the reserve fund which was greatly reduced in 1977.

Legal and Administrative Program

1978	\$3,915,000	
1979	4,160,000	
1980	4,315,000	
		\$12,390,000

Herbert Lehman Education Fund (undergraduate)

1978 (160 scholarships)	\$ 225,000	
1979 (175 scholarships)	245,000	
1980 (190 scholarships)	265,000	
		735,000

Earl Warren Legal Training Program (graduate)

Scholarship Program/1978-1980	\$3,888,000	
Fellowship Program/1978-1980	730,600	
Lawyer Training		
Institutes/1978-1980	315,000	
Legal Seminars/1978-1980	225,000	
Second and third year law students	168,000	
		\$5,326,600
TOTAL		\$18,451,600



Earl Warren served as Chief Justice from 1953 to 1969.

"I came here ... to say to those who support you with funds that their money could not be contributed to a better cause.

"You have fought the good fight and have done so much of the time alone but always within the compass of our institutions. During almost half of that time, I sat on the Supreme Court listening to the arguments of your counsel; reading your briefs, and deciding the cases that never would have reached us for decision had it not been for your participation.

"I came to the Supreme Court ... and on arrival found on my desk the briefs in *Brown v. Board of Education* and its companion cases. Only a few weeks later, I heard the arguments of your then counsel, later my colleague, Thurgood Marshall, and the counsel for the several States who were then defending the false doctrine of 'separate but equal' which had led millions of black Americans almost to the point of complete despair. During the following years there were few, if any, months in which cases were not presented either by Justice Marshall while counsel or by Jack Greenberg, James M. Nabrit III, or some other member of your legal staff. Every case they brought to us was an important one, and one that affected not only the black population but also every minority group in the nation...

"In all our efforts, we should remember that constitutional protections are more likely to be lost through the indirectness of erosion than through an open assault.

"It has been well said that the words of a constitution mean nothing unless some lawyer has the courage to stand up in a courtroom and fight to give them meaning. That is what you have been doing through the years..."

Earl Warren

Chief Justice of the United States,
Retired, in an address before the May
15, 1970 Legal Defense Fund Institute on
"The Crisis in American Justice."

PHOTO CREDITS

Page

4	Chester Higgins, Jr.
8	Robert Emmet Coles
10	Wide World Photos
15	Thomas Victor
22	Denning Studio, Philadelphia, PA
24	Wide World Photos
30	Wide World Photos
31	Wide World Photos
32	Wide World Photos
33	Chase Studios
34	Allen Green, Visual Departures
42	News & Publications Services, Stanford University
45 (left)	Harvard University News Office
45 (right)	Al Wegener, The New York Times
47	Nick Romananko, <u>Columbia College Today</u>
48	The New York Times
58 (left)	News Voice International
58 (right)	James McCray, Citilite Photos
59	James McCray, Citilite Photos
64	Wide World Photos

CONCEPT, RESEARCH, WRITING:

Henry & Elizabeth Urrows

H. & E. Urrows

Editor: Anne Dowling

Coordinator and Editorial Assistant: Geneive Brown

Design: Andréa Marquez